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ABSTRACT

This document contains regulations of the Rhode Island Board of Regents for Elementary and Secondary Education governing the education of children with disabilities. Statutory language is provided that addresses the following areas: (1) purposes of the legislation; (2) definitions of terms used in the statutory language; (3) local education agency eligibility; (4) free appropriate public education requirements for students with disabilities; (5) Individualized Education Program (IEP) requirements; (6) children in private schools; (7) due process procedures for parents and children; (8) discipline procedures; (9) procedures for evaluation and determination of eligibility; (10) additional procedures for evaluating children with specific learning disabilities; (11) least restrictive environment requirements; (12) criteria for instructional programs; (13) confidentiality of information requirements; (14) state administration; (15) state advisory panel establishment, membership, and functions; (16) state compliant procedures; (17) parental notice requirements; and (18) least restrictive environment training and monitoring. An appendix includes a list of timelines for referral, evaluation, eligibility, development of IEP, and reevaluation. (CR)

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ED 454 646

RHODE ISLAND BOARD OF REGENTS FOR ELEMENTARY AND SECONDARY EDUCATION

REGULATIONS GOVERNING THE EDUCATION OF CHILDREN WITH DISABILITIES

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Part A—General

Purposes, Applicability, and Regulations

300.1 Purposes.

The purposes of these regulations are -

(a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living;

(b) To ensure that the rights of children with disabilities and their parents are protected;

(c) To assist state agencies, local education agencies, educational collaboratives, and other public agencies to provide for the education of all children with disabilities; and

(d) To assess and ensure the effectiveness of efforts to educate children with disabilities.

300.2 Applicability of this part to State, local, and private agencies.

(a) **States.** The federal regulations which these state regulations implement apply to Rhode Island because Rhode Island receives federal funds under Part B of the I.D.E.A.

(b) **Public agencies within the State**. The provisions of these regulations

(1) Apply to all political subdivisions of the State that are involved in the education of children with disabilities, including -

(i) The Rhode Island Department of Education (RIDE);

(ii) Local educational agencies (LEAs), educational collaboratives, and public charter schools.

(iii) Other State agencies and schools; and

(iv) State and local juvenile and adult correctional facilities; and

(2) Are binding on each public agency in the State that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B or state funds.

(b) **Private schools and facilities**. Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the IDEA and these regulations are given to children with disabilities—

(1) Referred to or placed in private schools and facilities by that public agency; or

(2) Placed in private schools by their parents under the provisions of 300.403(c) of these regulations.

300.3 Reserved.

300.3(A) Authority and Enforcement.

(a) Authority. These regulations are established pursuant to Title 16, Chapter 24 of the General Laws of Rhode Island and by the Federal Individuals with Disabilities Education Act, 1997 (20 U.S.C., Chapter 33, 1400 et. seq.).

(b) Enforcement. Any school district that does not comply with the provisions of these regulations in the administration of educational programs for children with disabilities shall be subject to the penalty provided in the General Laws of Rhode Island at R.I.G.L. 16-5-30. The law states that the Rhode Island Board of Regents for Elementary and Secondary Education shall report all infractions of school law annually to the Rhode Island General Assembly. The report shall be brought to the attention of the Rhode Island General Assembly with a record of the action that was taken by the Rhode Island Department of Elementary and Secondary Education in each instance.

(c) Violation of Section 504 of the Federal Rehabilitation Act of 1973, as amended.

Any school district or State Agency that does not comply with these regulations shall be subject to the penalty provided in the Federal Individuals with Disabilities Education Act, 1997, as amended (20 U.S.C. 1416), Section 504 of the Federal Rehabilitation Act of 1973, as amended – Nondiscrimination on the basis of Disability in Programs and Activities Receiving or Benefiting From Federal Financial Assistance and the Americans With Disabilities Act (42 U.S.C. 12101).

Definitions Used In These Regulations

300.4 Act.

As used in these regulations, **Act** means the Individuals with Disabilities Education Act (IDEA) 1997, as amended.

300.5 Assistive technology device.

As used in these regulations, **Assistive technology device** means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.

300.6 Assistive technology service.

As used in this part, **Assistive technology service** means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.

The term includes—

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology

devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

300.7 Child with a disability.

(a) **General**. (1) As used in this part, the term **child with a disability** means a child, aged 3 to 21, evaluated in accordance with 300.530-300.536 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, an orthopedic impairment, autism spectrum disorder, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§300.530-300.536, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, *the child is not a child with a disability under this part.*

(ii) If, consistent with §300.26(a)(2), the related service required by the child is considered special education rather than a related service under State standards, *the child would be determined to be a child with a disability under paragraph (a)(1) of this section.*

(iii) If appropriate, the child may receive related services pursuant to Section 504 of the Rehabilitation Act and The Americans With Disabilities Act consistent with these laws and regulations.

(b) **Children aged 3 through 5 experiencing developmental delays**. The term **child with a disability** for children aged 3 through 5 (i.e. until the child's sixth birthday), includes a child who shall qualify for preschool special education and related services when the child is experiencing a developmental delay or a disability, as determined by the evaluation process.

(1) A developmental delay or disability is defined as a twenty five per cent (25%) delay and / or score equal to or greater than two standard deviations below the mean in one of the following areas of development; or a score equal to or greater than 1.5 standard deviations below the mean in two (2) or more of the following areas of development : social / emotional or behavioral adjustment, cognition, communication, receptive language, expressive language, visual perception, fine motor, or gross motor. Children

aged three (3) through five (5) years old, who are eligible, include those children having a diagnosed physical or mental condition, which would adversely affect educational performance.

(2) Who, by reason thereof, needs special education and related services.

(c) **Definitions of disability terms**. The terms used in this definition are defined as follows:

(1)(i) **Autism Spectrum Disorder** means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3 that adversely affects a child's educational performance. Included in the spectrum are: Autism, Pervasive Developmental Disorder Not Otherwise Specified, Rett's Disorder, Asperger's Disorder and Childhood Disintegrative Disorder. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance as defined herein.

(ii) A child who manifests the characteristics of "autism spectrum disorder" after age 3 could be diagnosed as having "autism spectrum disorder" if the criteria of this section are satisfied.

(2) **Deaf-blindness** means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) **Deafness** means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

(4) **Emotional disturbance** is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

(5) **Hearing impairment** means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

(6) **Mental retardation** means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

(7) **Multiple disabilities** means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

(8) **Orthopedic impairment** means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(9) **Other health impairment** means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and

(ii Adversely affects a child's educational performance.

(10) **Specific learning disability** is defined as follows:

(i) **General**. The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) **Disorders not included**. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(11) **Speech or language impairment** means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

(12) **Traumatic brain injury** means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain

injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(13) **Visual impairment including blindness** means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

300.8 Consent.

The term **consent** has the meaning given that term in 300.500(b)(1), that is:

(i) the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(ii) the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(iii) (A) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime;

(B) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

300.9 Day; business day; school day.

As used in these regulations, the term—

(a) **Day** means calendar day unless otherwise indicated as business day or school day;

(b) **Business day** means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in 300.403(d)(1)(ii) and

(c)(1) **School day** means any day, including a partial day that children are in attendance at school for instructional purposes.

(2) The term **school day** has the same meaning for all children in school, including children with and without disabilities, except for pre-school aged children with mild to moderate disabilities for whom a school day shall consist of a minimum of a two and one-half (2 ½) hours. A school day for pre-school aged children with severe or profound mental retardation or multiple disabilities shall consist of a minimum of five 5 hours.

300.9(A) School Year.

The school year for children with disabilities shall be the same as that for non-disabled children except for those children who have an Individual Education Program that calls for an Extended School Year (ESY services) or for children with severe or profound mental retardation or multiple disabilities. For children who have an I.E.P. that calls for Extended School Year services, a school year shall consist of the service delivery period specified in the I.E.P. except for children with severe or profound mental retardation or multiple disabilities whose school year shall consist of a minimum of two hundred and thirty (230) school days.

300.10 Educational Collaboratives.

As used in these regulations, the term **educational collaboratives**—

(a) Means a regional public multiservice agency—

(1) Authorized by State law to develop, manage, and provide services or programs to LEAs; and

(2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State;

(b) Includes any other public institution or agency having administrative control and direction over a public elementary or secondary school.

300.11 Equipment.

As used in this part, the term *equipment* means-

(a) Machinery, utilities, and built-in equipment and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

(b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audiovisual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

300.12 Evaluation.

As used in these regulations, the term *evaluation* has the meaning given that term in 300.500(b)(2).

300.13 Free appropriate public education.

As used in these regulations, the term **free appropriate public education** or **FAPE** means special education and related services that—

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the RIDE, including the requirements of these regulations;

(c) Include preschool, elementary school, or secondary school education in the State; and

(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of 300.340-300.350 relating to I.E.P.s.

300.14 Include.

As used in this part, the term *include* means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

300.15 Individualized education program (IEP).

As used in these regulations, the term **individualized education program** or **IEP** has the meaning given the term in 300.340(a),

300.16 Individualized education program team.

As used in these regulations, the term **individualized education program team** or **IEP team** means a group of individuals described in 300.344 of these regulations that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

300.17 Individualized family service plan (IFSP).

As used in these regulations, the term **individualized family service plan** or **IFSP** has the meaning given the term in 34 CFR 303.340(b), which describes an **IFSP** as a written plan for providing early intervention services to a child eligible under this part (of the **ACT**) and the child's family.

300.18 Local educational agency (LEA).

(a) As used in these regulations, the term **local educational agency** means a public board of education or other public authority legally constituted within the State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of the State, or for a combination of school districts or counties as are recognized in the State as an administrative agency for its public elementary or secondary schools.

(b) The term includes—

(1) An educational collaborative as defined in 300.10

(2) Any other public institution or agency having administrative control and direction of a public elementary or secondary school, including a public charter school that is established as an LEA under State law.

(c) The term also includes---

(1) The SEA, LEAs, Educational Collaboratives, public charter schools that are not otherwise included as LEAs or Educational Collaboratives and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities, pursuant to Federal Regulation 34 CFR 300.22.

300.18(A) State Education Agency (SEA).

As used in these regulations the term State Education Agency (SEA) refers to the Rhode Island Department of Elementary and Secondary Education (RIDE) which is responsible for the general supervision of all education programs for children with disabilities in Rhode Island including all such programs administered by any other state or local agency.

300.19 Native Language.

(a) As used in these regulations, the term **native language**, if used with reference to an individual of limited English proficiency, means the following:

(1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.

(2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, braille, or oral communication).

300.20 Parent.

(a) **General**. As used in these regulations the term parent means—

(1) A natural or adoptive parent of a child;

(2) A guardian but not the State if the child is a ward of the State;

(3) A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare); or

(4) A surrogate parent who has been appointed in accordance with 300.515.

(b) **Foster parent**. As used in these regulations a foster parent may act as a parent if-

(1) The natural parents' authority to make educational decisions on the child's behalf has been removed under State law, pursuant to RIGL 33-15.1-2, and

(2) The foster parent—

(i) Has an ongoing, long-term parental relationship with the child;

(ii) Is willing to make the educational decisions required of parents under the Act; and

(iii) Has no interest that would conflict with the interests of the child.

300.21 Personally Identifiable.

As used in these regulations, the term personally identifiable information is set forth in Regulation 300.500(b)(3) and means information that includes

The name of the child, the child's parent, or other family member;

The address of the child;

A personal identifier, such as the child's social security number of student number; or

A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

300.22 Public Agency.

As used in these regulations, the term *public agency* includes the SEA, LEAs, Educational Collaboratives, public charter schools that are not otherwise included as LEAs or Educational Collaboratives and are not a school of an LEA or Educational Collaboratives, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

300.23 Qualified personnel.

As used in these regulations, the term **qualified personnel** means personnel who have met State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education or related services or to the subject content area in which the individuals are providing instruction.

300.24 Related services.

(a) **General**. As used in these regulations, the term **related services** means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) **Individual terms defined**. The terms used in this definition are defined as follows:

(1) **Audiology** includes—

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) **Counseling services** means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) **Early identification and assessment of disabilities in children** means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) **Medical services** means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(5) **Occupational therapy**—

(i) Means services provided by a qualified occupational therapist; or services provided by a certified occupational therapist assistant under supervision of a certified occupational therapist; and

(A) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(C) Preventing, through early intervention, initial or further impairment or loss of function.

(6) **Orientation and mobility services**—

(i) Means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

(ii) Includes teaching students the following, as appropriate:

(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(B) To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

(C) To understand and use remaining vision and distance low vision aids; and

(D) Other concepts, techniques, and tools.

(7) **Parent counseling and training** means—

(i) Assisting parents in understanding the special needs of their child;

(ii) Providing parents with information about child development; and

(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(8) **Physical therapy** means services provided by a qualified physical therapist or by a qualified physical therapy assistant under the supervision of a qualified physical therapist.

(9) **Psychological services** includes --

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(10) **Recreation** includes—

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(11) **Rehabilitation counseling services** means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(12) **School health services** means services provided by a qualified school nurse or other qualified person and in conformance with the school health regulations jointly established by the RI Departments of Health and Education.

(13) **Social work services in schools** includes—

(i) Preparing a social or developmental history on a child with a disability;

(ii) Group and individual counseling with the child and family;

(iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(14) **Speech-language pathology services** includes—

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(v) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(i) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(15) **Transportation** includes-

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(iv) Those requirements in 300.310 of these regulations.

300.25 Secondary School.

As used in these regulations, ***secondary school*** means a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

300.26 Special education.

(a) **General**. (1) As used in these regulations, the term **special education** means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) The term includes each of the following, if it meets the requirements of paragraph (a)(1) of this section:

(i) Speech-language pathology services;

(ii) Travel training; and

(iii) Vocational education.

(b) **Individual terms defined**. The terms in this definition are defined as follows:

(1) **At no cost** means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(2) **Physical education**—

(i) Means the development of—

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

(ii) Includes special physical education, adapted physical education, movement education, and motor development.

(3) **Specially-designed instruction** means adapting, as appropriate to the needs of an

eligible child under this part, the content, methodology, or delivery of instruction—

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(4) **Travel training** means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to—

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(5) **Vocational education** means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

300.27 Reserved.

300.28 Supplementary aids and services.

As used in these regulations, the term **supplementary aids and services** means, aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with these regulations 300.550-300.556.

300.29 Transition services.

(a) As used in this part, **transition services** means a coordinated set of activities for a student with a disability that—

(1) Is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual student's needs, taking into account the student's preferences and interests; and

(3) Includes—

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and functional vocational evaluation.

(b) Transition services for students with disabilities may be special education, if provided

as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

300.30 Reserved.

300.31 Vocational / Career Assessment.

Vocational / Career Assessment is a strength based, student centered process by which information is obtained to assist students in designing individualized education and vocational services to reach their career goals. This includes the use of formal and informal methods to collect information, including: Interest inventories, student interviews, parent interviews, skill and aptitude tests, on-campus and off-campus situational assessments, work samples, vocational evaluations, performance in career related courses and other methods. Vocational / Career Assessment is an on going process not a single test or procedure. The results of Vocational / Career Assessment are shared at IEP meetings and the information obtained through the Vocational / Career Assessment should be infused into designing the student's educational services. When choosing specific vocational assessment instruments, the Team should refer to Section 533 of these regulations.

Part B—Local Education Agency Eligibility

300.121 Free appropriate public education (FAPE).

(a) Reserved.

(b) Reserved.

(c) FAPE for children beginning at age 3.

(1) The SEA and each Local Education Agency shall ensure that—

(i) The obligation to make FAPE available to each eligible resident child begins no later than the child's third birthday and continues until the child's twenty first birthday or until the child receives a regular high school diploma; and

(ii) An IEP or an IFSP is in effect for the child by the child's third birthday, in accordance with these regulations.

(2) If a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin.

(d) **FAPE for children suspended or expelled from school**.

(1) A local education agency need not provide services to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed.

(2) In the case of a child with a disability who has been removed from his or her current placement for more than 10 school days in that school year, the LEA, for the remainder of the removals, must—

(i) Provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP. The child's IEP team determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed because of behavior that has been determined not to be a manifestation of the child's disability.

(3) In the case of a child who is removed from his or her current placement to an interim alternative educational setting for reasons described in paragraph (3) (ii) and (iii) of this section, the LEA must

(i) Provide services consistent with 300.522, regarding determination of the appropriate interim alternative educational setting, if the removal is—

(ii) For drug or weapons offenses under 300.520(a)(2) of these regulations; or

(iii) Based on a hearing officer determination that maintaining the current placement of

the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement, consistent with 300.521.

(e) **Children advancing from grade to grade**.

(1) The SEA and each LEA shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child is advancing from grade to grade.

(2) The determination that a child is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making those determinations.

300.122 Exception to FAPE.

(a) **General**. The obligation to make FAPE available to all children with disabilities does not apply to students with disabilities who have graduated from high school with a regular high school diploma.

(1) This does not apply to students who have graduated but have not been awarded a regular high school diploma.

(2) The LEA's responsibility to make FAPE available for all children with disabilities continues until the child/student either graduates from high school with a regular diploma or until the child /student attains the age of twenty one (21).

(b) **Graduation**. Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with Part E of these regulations at RI Regulation 300.504.

300.123 Reserved.

300.124 Reserved.

300.125 Child find.

(a) General requirement.

(1) The SEA and the LEA must have in effect policies and procedures to ensure that—

(i) All children with disabilities who are residents of the LEA, including children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(2) The requirements of paragraph (a)(1) of this section apply to—

(i) Highly mobile children with disabilities (such as migrant and homeless children); and

(ii) Children who are suspected of being a child with a disability under these regulations and in need of special education, even though they are advancing from grade to grade.

(b) Documents relating to child find. The LEA must have on file with the RIDE the

policies and procedures described in paragraph (a) of this section, including—

(1) The name of the LEA Representative responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section;

(2) The name of each agency that participates in the planning and implementation of the child find activities and a description of the nature and extent of its participation;

(3) A description of how the policies and procedures under paragraph (a) of this section will be monitored to ensure that the LEA obtains—

(i) The number of children with disabilities within each disability category that have been identified, located, and evaluated; and

(ii) Information adequate to evaluate the effectiveness of those policies and procedures; and

(4) A description of the method the LEA uses to determine which children are currently receiving special education and related services.

(c) Child find for children from birth through age 2 (until the child turns age three) with the Department of Health as the lead agency administering Part C of the Act.

(1)The RI Department of Health is the lead agency for administering Part C of the Act, and implements a comprehensive system of child find activities including:

(i) prior notice;

(ii) universal screening;

(iii) acting on direct referrals; and

(iv) evaluation and assessment procedures.

(2) The RI Department of Education and the RI Department of Health have executed interagency agreements which serve as the primary mechanism through which universal screening is conducted and which specify the administrative, fiscal, and programmatic responsibility of each department relative to Child Find activities.

(d) The use of an interagency agreement or other mechanism for providing for the Early Intervention lead agency's participation does not alter or diminish the responsibility of the LEA to ensure compliance with the requirements of this section.

(e) Confidentiality of child find data. The collection and use of data to meet the requirements of this section are subject to the confidentiality requirements of these regulations.

300.126 Procedures for evaluation and determination of eligibility.

The LEA must have on file with the SEA and for public review, policies and procedures that ensure that the requirements of these regulations are met.

300.127 Confidentiality of personally identifiable information.

The LEA must have on file with the RIDE and for public review, detailed policies and procedures that the LEA has undertaken to ensure protection of the confidentiality of any

personally identifiable information, collected, used, or maintained under Part B of the Act and R.I.G.L. 16-71.

300.128 Individualized education programs.

(a) **General**. The LEA must have on file with the RIDE information that shows that an IEP, or an IFSP that meets the requirements the RIDE, is developed, reviewed, and revised for each child with a disability in accordance with these regulations.

(b) **Required information**. The information described in paragraph (a) of this section must include—

(1) A copy of each LEA policy and procedure that guides the manner in which IEPs are developed, implemented, reviewed, and revised; and

(2) The procedures that the LEA follows in monitoring and evaluating those IEPs or IFSPs.

300.129 Procedural safeguards.

(a) The LEA must have on file with the RIDE procedural safeguards that ensure that the requirements of these regulations are met.

(b) Children with disabilities and their parents must be afforded the procedural safeguards identified in paragraph (a) of this section.

300.130 Least restrictive environment.

General. The LEA must have on file with the RIDE procedures that ensure that the requirements of these regulations are met, including the provision of an array of service options to meet the unique needs of each child with a disability. The procedures must include a description of the LEA's plan to educate children with disabilities with non-disabled peers and how children with disabilities access the general education curriculum.

300.131 Reserved.

300.132 Transition of children from Part C to preschool programs.

(a) The LEA must have on file with the RIDE assurances that the LEA will make FAPE available to each eligible child, beginning no later than the child's third birthday.

(a) An IEP or IFSP must be in effect for the child by that date.

(b) If a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin.

(c) At the time the child turns thirty (30) months, a transition team minimally consisting of a resident school district representative, the parent(s), an Early Intervention Program representative, and at the discretion of the parent(s) or agencies, other individuals who have knowledge or expertise regarding the child, including child care, Head Start, advocates and home provider, other family members and related services personnel. The Transition Team will develop a written plan which includes the activities to take place during the transition period, the timelines in which the

activities will occur, and the persons responsible for carrying out these activities.

(d) These activities will occur over a six (6) month period of time and will reflect the individual needs of the child and the participation of the child's family. For a child who will become thirty-six (36) months of age between May and September, these activities will occur on an adjusted timeline that will allow for the participation of all parties, and to insure that the child will begin receiving special education and related services upon the opening of school, or when the child turns thirty six (36) months if a child is eligible for an extended school year program.

(e) As part of the transition plan, if a child is determined to be ineligible for special education services, the transition team will refer the family and child to appropriate community resources.

(f) The LEA representative must have authority to commit resources.

300.133 Children in private schools.

The LEA must have on file with the SEA and for public review, policies and procedures that ensure that the requirements of these regulations are met regarding children in private schools.

300.134 Reserved.

300.135 Comprehensive system of personnel development.

(a) **General**. The LEA must have in effect, consistent with the purposes of these regulations, with section 635(a)(8) of the IDEA and with RI Student Investment Initiative, a comprehensive system of personnel development that-

(1) Is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel; and,

(2) Is aligned with the Rhode Island State Improvement Plan relating to personnel development in section 653(b)(2)(B) and (c)(3)(D) of the IDEA.

(b) **Information**. The LEA must have on file with the RIDE information that shows that the requirements of paragraph (a) of this section are met.

300.136 Personnel.

(a) Certification-Licensure. All professional personnel, whether employed on a full-time or part-time basis, or under a contractual agreement, for whom certificates or licenses are required by State law and/ or regulations, shall hold appropriate certificates or licenses. Where no such mandates exist, such personnel shall show evidence satisfactory to the Rhode Island Department of Elementary and Secondary Education that they have appropriate professional training and/or experience to perform satisfactorily and successfully in their respective areas.

(b) Special Education Director. Every school district* must employ a full-time special education director, provided however, school districts may join with a neighboring school district in appointing a full-time special education director to conduct a regional special education program. A school district having more than ten thousand (10,000) students enrolled in the public and non-public schools, and children in the

age range of three (3) through five (5) years old in the school district shall also employ a full-time assistant special education director for every two-thousand (2,000) students enrolled in excess of ten thousand (10,000) students. A regional program which consists of more than two (2) communities shall also employ a full-time assistant special education director. If the total enrollment in the regionalized communities is over twelve thousand (12,000) students, an additional assistant special education director shall be employed for every two thousand (2,000) enrolled students above twelve thousand (12,000) students.

(c) School Psychologist. A school district having one thousand, five hundred (1,500) students enrolled in the public and non-public schools and children in the age range of three (3) through five (5) years old shall employ one (1) full-time school psychologist or equivalent for each one thousand, five hundred (1,500) students enrolled. In cases where the enrolled population of students falls between even multiples of fifteen hundred (1,500) (for example, 1,550), the school district shall employ a school psychologist on a part-time basis in accordance with the needs of the students with disabilities to be served, as determined by the evaluation team. Caseloads for school psychologists shall be assigned by the local responsible authority, in a prudent and equitable manner, based on the time required to properly serve the severity of the needs of the students with disabilities involved, as determined by the evaluation process. This ratio is a minimum standard. Each school district shall employ a sufficient number of school psychologists to meet all of the evaluation and the placement timelines as well as each student's individual service needs identified through the evaluation, the Team of Qualified Professionals and the Parent(s) (Team) and the individualized education program (IEP).

(d) Speech/Language Pathologist. A school district having a combined enrollment of one-thousand, two-hundred (1,200) students enrolled in the public and non-public schools and children in the age range of three (3) through (5) years old shall employ a full-time speech/language pathologist or equivalent for each one-thousand, two-hundred (1,200) students enrolled. In cases where the enrolled population of students falls between even multiples of twelve hundred (1,200), (for example, 1,250), the school district shall employ a speech/language pathologist on a part-time basis in accordance with the needs, as determined by the evaluation process, of students with speech/language disabilities to be served. Caseloads of a speech/language pathologist shall be assigned by the responsible local authority in a prudent and equitable manner, based on the time required to properly serve the severity of the needs of the students with disabilities involved, as determined by the evaluation process. This ratio is a minimum standard. Each school district shall employ a sufficient number of speech/language pathologists to meet all of the evaluation and the placement timelines as well as each student's individual service needs identified through the evaluation, the Team of Qualified Professionals and the Parent(s) (Team) and the individualized education program (IEP) process.

(e) School Social Worker. A school district having two-thousand, five hundred (2,500) students enrolled in the public and non-public schools and children in the age range of three (3) through five (5) years old shall employ one (1) full-time school social worker or equivalent to each two-thousand, five-hundred (2,500) students enrolled. In

cases where the enrolled population of students falls between even multiples of two-thousand, five-hundred (2,500), (for example, 2,550), the school district shall employ a school social worker on a part-time basis in accordance with the needs of the students with disabilities to be served. Caseloads of school social workers shall be assigned by the local responsible authority, in a prudent and equitable manner, based on the time required to properly serve the severity of the needs of the students with disabilities involved, as determined by the evaluation process. This ratio is a minimum standard. Each school district shall employ a sufficient number of school social workers to meet all of the evaluation and the placement timelines, as well as each student's individual service needs identified through the evaluation, the Team of Qualified Professionals and the Parent(s) (Team) and the individualized education program (IEP) process.

(f) Physical and Occupational Therapists. The school, committee of each school district shall employ one (1) full-time physical and/or occupational therapist or equivalent for every thirty (30) students with mild to moderate disabilities identified as being in need of physical and/or occupational therapy. School districts which have less than thirty (30) resident students with mild to moderate disabilities in need of physical and/or occupational therapy may join with another school district(s) in providing a full-time physical and/or occupational therapist for every thirty (30) students identified. Each school district shall also provide a physical and/or occupational therapist at least one (1) full day per week for every six (6) resident students with severe or profound mental retardation and/or multi-handicapped disabilities identified as being in need of physical and/or occupational therapy. School districts which have less than six (6) such students may join with another school district(s) in providing a physical and/or occupational therapist at least one (1) full day per week for every six (6) identified students. In cases where the identified population of students with mild to moderate disabilities in need of physical and/or occupational therapy should fall between multiples of thirty (30) (for example, 42), the school district shall employ a physical and/or occupational therapist on a part-time basis in accordance with the needs of such students as determined by the evaluation process. Caseloads for physical and occupational therapists shall be assigned by the local responsible authority, in a prudent and equitable manner, based on the time required to properly serve the severity of needs of the students with disabilities involved, as determined by the evaluation process and the recommendation of the student's physician.

* New Shoreham is exempted because of its low population and impracticability of regionalizing with another community. It must, however, have a part-time administrator for sufficient time to meet the needs of the school district.

300.137 Reserved.

300.138 Participation in assessments.

The LEA must have on file with the RIDE and for public review, information to demonstrate that—

(a) Children with disabilities are included in general State and district-wide assessment

programs, with appropriate accommodations and modifications in administration, if necessary;

(b) The LEA must adhere to the RIDE procedures relative to the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs;

300.139 Reports relating to assessments.

(a) **General**. The LEA shall make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following information:

(1) The number of children with disabilities participating—

(i) In regular assessments; and

(ii) In alternate assessments.

(2) The performance results of the children described in paragraph (a)(1) of this section if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children—

(i) On regular assessments; and

(ii) On alternate assessments.

(b) **Combined reports**. Reports to the public under paragraph (a) of this section must include—

(1) Aggregated data that include the performance of children with disabilities together with all other children; and

(2) Disaggregated data on the performance of children with disabilities.

300.140 Reserved.

300.141 Reserved.

300.142 Ensuring services through Interagency Agreements.

(a) Establishing responsibility for services. The LEA must have on file with the RIDE Interagency Agreements that meet the requirements described in these regulations and the requirements of the R.I. School Investment Initiative.

300.143 Consistency with State policies.

(a) **General**. The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect and on file with the RIDE, policies, procedures, and programs that are consistent with the State policies and procedures.

300.144-149 Reserved

Local Advisory Committee

300.150 Local Advisory Committee on Special Education (LAC).

(a) The school committee of each local educational or regional special education program shall appoint an Advisory Committee on Special Education. The school committee shall approve the by-laws of the advisory committee.

(b) Membership: Each local or regional committee shall be composed of persons involved in or concerned with the education of students with disabilities. Parents of students with disabilities shall compose a majority of the committee membership, and at least fifty percent (50%) of this majority shall be selected by the parents of students with disabilities. A regional committee shall reflect an equal distribution of representatives from each of the school districts that comprise the regional program. Membership shall include an individual with a disability, a public school administrator, a special education teacher, a general education teacher and other members of the community at the discretion of the committee and school board.

(c) Functions and Responsibilities of the LAC: The committee shall advise the school district or regional program on matters concerning the unmet needs of students with disabilities, comment on improvement plans including school support plans resulting from Part B compliance reports, local compliance with state and federal laws pertaining to the education of students with disabilities, comment on applications for federal and state funds and serve as advocates in partnership with parents for students with disabilities to ensure that they receive the entitlements provided to them under state and federal laws.

(d) Duties and Responsibilities of the Local or Regional Agency: The local or regional educational agency shall provide support to the committee by contracting for technical assistance services with the Rhode Island designated Parent Training and Technical Assistance Agency or other community-based non-profit parent organization. Such technical assistance shall include the role of advisory committees in advocating for children, state and federal regulations, community resources, strategic planning and development of an annual report to the school committee. The local or regional educational agency shall also provide school and district improvement plans to the committee for comment and make available appropriate records and data as permitted by law. The public agency shall also support the committee in disseminating information to parents of students regarding the role of the advisory committee, information pertaining to special education and inform the committee of professional development opportunities that are available within the LEA.

(e) Conduct of Meetings: The committee shall meet as often as necessary to conduct its business but at least four times annually. Official minutes shall be kept of all committee meetings and be available for public review. All committee meetings and agendas shall be publicly announced prior to any meeting, and meetings shall be open to the public.

(f) Members of the committee shall serve without compensation but may be reimbursed for reasonable and necessary expenses for attending meetings and performing duties.

(g) Parent Notification of Local or Regional Advisory Committee: When a child is referred to special education, each school district or regional special education program

shall provide the parents with notification of the existence of the Local or Regional Advisory Committee for Special Education established in compliance with these regulations. The notification shall specify that a majority of the Local Advisory Committee (LAC) on Special Education is parents of children with disabilities, and shall inform the parents how the chairperson of the Local Advisory Committee (LAC) for Special Education or the Regional Advisory Committee on Special Education may be contacted.

300.151 Regional Transition Services Advisory Committee (TAC).

Within each of the legislatively created Collaboratives and Providence, there shall be a Transition Advisory Committee (T.A.C.) that will conform to guidelines issued by the RIDE. The membership of the T.A.C. shall meet monthly during the school year. By the first of July of each year, the T.A.C. shall submit to the State Transition Council an annual report of activities and recommendations.

300.152-300.239 Reserved.

300.240 Information for RIDE.

(a) The LEA shall provide the RIDE with information necessary to enable the RIDE to carry out its duties under the IDEA.

300.241 Treatment of charter schools and their students.

The LEA must have on file with the RIDE information to demonstrate that in carrying out this part with respect to charter schools that are public schools of the LEA, the LEA will -

(a) Serve children with disabilities attending those schools in the same manner as it serves children with disabilities in its other schools; and

(b) Provide funds under Part B of the Act to those schools in the same manner as it provides those funds to its other schools.

300.242 Public information.

The LEA must have on file with the RIDE information to demonstrate to the satisfaction of the SEA that it will make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under the IDEA.

Part C—Services

Free Appropriate Public Education

300.300 Provision of a Free Appropriate Public Education.

Each child with a disability, including children with disabilities who have been suspended or expelled (long term suspension) from school, shall be provided a Free Appropriate Public Education (FAPE) as defined herein at 300.13.

300.300(A) Facilities.

Physical facilities for all special education and related services shall conform to the provisions of Section 504 of the Rehabilitation Act of 1973, The Americans With Disabilities Act, as amended, and to all regulations governing the approval of nursery, elementary and secondary schools in Rhode Island and any other applicable Federal or State laws and regulations. All special education programs, services and activities shall be administered in the most integrated setting appropriate to meet the individual needs of students with disabilities in school buildings with general education classes. These integrated special education programs and services shall be located on the same floor level (except where otherwise specified by these regulations) and in close proximity to general education classes.

300.301 FAPE – Methods and Payments.

Nothing in these regulations relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

300.302 Residential Placement.

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

300.302(A) General Conditions for the Protection and Well-Being of Children.

Special Education programs and services are designed to protect each child from exposure to verbal, mental or physical abuse, humiliation or any form of corporal punishment. Physical intervention, the use of manual or mechanical restraint or escort involving physical contact should be used only as a crisis or emergency intervention for the purpose of preventing harm or injury. The crisis or emergency intervention must not include procedures that cause pain, trauma or injury. Such plans must be incorporated into the child's IEP and conform to R.I. Regulations Governing Limitation on Physical Restraint.

300.303 Proper functioning of hearing aids.

Each LEA shall ensure that the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

300.304 Full Educational Opportunity Goal.

Each LEA shall ensure that each public agency establishes and implements a goal of providing full educational opportunity to all children with disabilities in the area served by the public agency.

300.305 Program options.

Each LEA shall provide full educational opportunity to all children with disabilities served by the LEA including the same variety of educational programs and services available to nondisabled children served by the LEA, including art, music, industrial arts, consumer and homemaking education, and vocational education.

300.306 Nonacademic services.

(a) Each LEA shall take steps to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

300.307 Physical education.

(a) **General**. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE.

(b) **Regular physical education**. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless—

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's IEP.

(c) **Special physical education**. If specially designed physical education is prescribed in a child's IEP, the LEA responsible for the education of that child shall provide the services directly or make arrangements for those services to be provided through other public or private programs.

(d) **Education in separate facilities**. The LEA responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.

300.308 Assistive technology.

(a) Each LEA shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in 300.5 and 300.6, are made available to a child with a disability if required as a part of the child's IEP.

(b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive FAPE.

300.309 Extended school year services.

(a) **General**.

(1) Each LEA shall ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with these regulations, that the services are necessary for the provision of FAPE to the child.

(3) In implementing the requirements of this section, a public agency may not—

(i) Limit extended school year services to particular categories of disability; or

(ii) Unilaterally limit the type, amount, or duration of those services.

(4) The school year for children who have severe or profound mental retardation or multiple disabilities and who have physical or sensory impairments in combination with other severe disability conditions shall consist of a minimum of two hundred and thirty (230) days. During the additional fifty (50) days to the typical 180 day school year, services shall be determined by the IEP team and provided in the least restrictive environment, which may include community based settings with children without disabilities.

(5) Nothing in these regulations shall be construed so as to deny the provisions of extended school year services to children with disabilities other than those referenced in subsection 4 of this section. Such services shall be based on the diagnosed needs of the child, the findings of the evaluation team and shall be described in the child's IEP.

(b) **Definition**. As used in these regulations, the term **extended school year services** means special education and related services that—

(1) Are provided to a child with a disability—

(i) Beyond the normal school year of the LEA;

(ii) In accordance with the child's IEP; and

(iii At no cost to the parents of the child; and

(2) Meet the standards of the SEA.

300.310 Transportation Services for Children with Disabilities.

(a) Responsibility. All students with disabilities who need special transportation as a related service and as determined by the evaluation process and described in the individual education program (IEP) shall be provided such service. It shall include free transportation from home to the educational program in which the child is enrolled. It shall also include free transportation to and from the clinical, diagnostic and therapeutic facilities when the clinical, diagnostic and therapeutic services are necessary to complete the child's evaluation or to provide the services required in the child's IEP.

(1) Appropriate devices, which accommodate specific transportation needs of the child, must be provided on an individualized basis.

(2) A minimum of one (1) aide must be assigned to each bus used for special transportation. Such aide, in addition to providing general care and supervision to all children with disabilities on such bus, shall also provide assistance (from street level entrance of the child's dwelling) to such children lacking the mobility to leave the home and board transportation vehicles, and shall further assist such children in disembarking the vehicle and entering school. When children are transported to clinical, diagnostic or therapeutic facilities, determination of whether a bus aide is necessary shall be based on the judgment of the IEP team.

(3) School districts shall provide inservice training for administrative personnel, drivers and aides providing special education transportation services in order that they may effectively deal with the children with disabilities and understand the issues and concerns of the parents of such children.

(4) Scheduling of transportation vehicles shall be planned whenever possible in such a manner as to provide for the least amount of travel time necessary to transport children with disabilities from home to school and back home again. When travel time for children with disabilities who are receiving special transportation is found to exceed one (1) hour to or from the location of special education services, the parent(s) shall be notified in writing. The notification shall include a description of the parent(s) right to an appeal. The school district will submit a copy of the notification to the Director of the Office of Special Needs at the RIDE. This notice will include the reason(s) for the duration of the travel time.

(5) All vehicles used in the transportation of children with disabilities as a related service shall be equipped with two-way communication devices in case of an emergency.

300.311 FAPE requirements for youth with disabilities in adult prisons.

(a) **Exception to FAPE for certain youth** The obligation to make FAPE available to all children with disabilities does not apply with respect to youth aged 18 through 21 who, in the last educational placement prior to their incarceration in an adult correctional facility—

(1) Were not identified as being a child with a disability under these regulations; and

(2) Did not have an IEP.

(b) **Requirements that do not apply**. The following requirements do not apply to youth with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

(1) The requirements relating to participation of children with disabilities in general assessments.

(2) The requirements relating to transition planning and transition services, with respect to the students whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(c) **Modifications of IEP**.

(1) Subject to paragraph (c)(2) of this section, the IEP team of a student with a disability, who is convicted as an adult under State law and incarcerated in an adult prison, may modify the student's IEP if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(2) The requirements relating to IEPs, and relating to LRE, do not apply with respect to the modifications described in paragraph (c)(1) of this section.

300.312 Children with disabilities in public charter schools.

(a) Children with disabilities who attend public charter schools and their parents retain all rights under these regulations.

(b) If the public charter school is an LEA that receives funding under 300.711-300.714, it must meet the requirements of the IDEA and these regulations.

(c) The LEA is responsible for ensuring that the requirements of these regulations are met if the public charter school is a school of the LEA.

300.313-300.319 Reserved.

Evaluations and Reevaluations

300.320 Initial evaluations.

(a) Each public agency shall ensure that a full and individual evaluation is conducted for each child being considered for special education and related services under Part B of the Act—

(1) To determine if the child is a "child with a disability" under §300.7; and

(2) To determine the educational needs of the child.

(b) In implementing the requirements of paragraph (a) of this section, the public agency shall ensure that—

(1) The evaluation is conducted in accordance with the procedures described in §§300.530-300.535; and

(2) The results of the evaluation are used by the childs IEP team in meeting the requirements of §§300.340-300.350.

300.321 Reevaluations.

Each public agency shall ensure that—

(a) A reevaluation of each child with a disability is conducted in accordance with §300.536; and

(b) The results of any reevaluations are addressed by the child's IEP team under §§300.340-300.349 in reviewing and, as appropriate, revising the child's IEP.

300.322-339 Reserved.

Individualized Education Programs

300.340 Definitions related to IEPs.

(a) **Individualized education program**. As used in this part, the term **individualized education program** or **IEP** means a written statement for a child with a disability that is developed, reviewed, and revised in a meeting in accordance with these regulations.

300.341 Responsibility of LEA and other public agencies for IEPs.

(a) The LEA —

(1) Shall develop and implement an IEP for each eligible child with a disability served by that LEA; and

(2) Shall ensure that an IEP is developed and implemented for each eligible child placed in or referred to a private school or facility by the LEA.

(b) Paragraph (a) of this section applies to—

(1) The State Agencies involved in providing direct services to children with disabilities, in accordance with these regulations.

300.342 When IEPs must be in effect.

(a) **General**. At the beginning of each school year, each LEA shall have an IEP in effect for each child with a disability within its jurisdiction.

(b) **Implementation of IEPs**. Each LEA shall ensure that—

(1) An IEP—

(i) Is in effect before special education and related services are provided to an eligible child under these regulations, and

(ii) Is implemented as soon as possible but no later than ten (10) school days following the IEP meeting.

Access to the IEP

(2) The child's IEP must be accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and

(3) Each teacher and provider must be informed of—

(i) His or her specific responsibilities related to implementing the child's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

(c) IEP or IFSP for children aged 3 through 5.

(1) In the case of a child with a disability aged 3 through 5 an IFSP that meets the requirements of RI Regulations 314-319, and 322-323 of these regulations may serve as the IEP of the child if using that plan as the IEP is—

(i) Consistent with State policy; and

(ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (4) of this section, the LEA shall—

(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and

(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

300.343 IEP meetings.

(a) **General**. Each LEA is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP or IFSP of a child with a disability or IFSP.

(b) **Initial IEPs; provision of services**. Each LEA shall ensure that following the agency's receipt of parental consent to an initial evaluation of a child:

(i) within forty five (45) school days the child is evaluated; and

(ii) In meeting the requirement in paragraph (b)(1) of this section, a meeting to develop an IEP for the child must be conducted within 15 school days of a determination that the child needs special education and related services.

(iii) If determined eligible under these regulations, special education and related services are made available to the child in accordance with an IEP within sixty (60) school days of the receipt of parental consent to evaluate.

(c) **Review and revision of IEPs**. Each LEA shall ensure that the IEP team—

(1) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(2) Revises the IEP as appropriate to address -

(i) Any lack of expected progress toward the annual goals described in the IEP, and in the general curriculum, if appropriate;

(ii) The results of any reevaluation conducted under these regulations,

(iii) Information about the child provided to, or by, the parents, as described in these regulations,

(iv) The child's anticipated needs; or

(v) Other matters.

(3) Each LEA shall ensure that an IEP meeting is scheduled within ten (10) school days of a request by the parent or the LEA to meet to review the child's IEP. (The parent may agree to waive this 10 school day meeting requirement if such parental waiver is documented by the LEA)

300.344 IEP team.

(a) **General**. The LEA shall ensure that the IEP team for each child with a disability includes—

(1) The parents of the child;

(2) At least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

(3) At least one special education teacher of the child, or if appropriate, at least one special education provider of the child;

(4) A representative of the LEA who -

(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(ii) Is knowledgeable about the general curriculum; and

(iii) Is knowledgeable about the availability of resources of the public agency and has the authority to commit those resources;

(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (6) of this section;

(6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(7) If appropriate, the child.

(b) **Transition services participants**.

(1) Under paragraph (a)(7) of this section, the LEA shall invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of—

(i) The student's transition services needs; or

(ii) The needed transition services for the student; or

(iii) Both.

(2) If the student does not attend the IEP meeting, the LEA shall take other steps to ensure that the student's preferences and interests are considered.

(3)(i) The LEA also shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services.

(ii) If an agency invited to send a representative to a meeting does not do so, the LEA shall take other steps to obtain participation of the other agency in the planning of any transition services.

(c) **Determination of knowledge and special expertise**. The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section shall be made by the party (parents or LEA) who invited the individual to be a member of the IEP team.

(d) **Designating a LEA representative**. A LEA may designate another LEA member of the IEP team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.

300.345 Parent participation.

(a) **LEA responsibility—general**. Each LEA shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including—

(1) Notifying parents of the meeting ten (10) school days prior to the meeting to ensure that they will have an opportunity to attend (the parent may agree to waive the ten (10) day notice requirement in order to expedite the IEP meeting); and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) **Information provided to parents**. (1) The notice required under paragraph (a)(1) of this section must—

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(ii) Inform the parents that the LEA or the parent may invite other individuals to participate on the IEP team who have knowledge or special expertise about the child).

(2) For a student with a disability beginning at age 14, or younger, if appropriate, the notice must also—

(i) Indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student; and

(ii) Indicate that the LEA will invite the student.

(3) For a student with a disability beginning at age 16, or younger, if appropriate, the notice must—

(i) Indicate that a purpose of the meeting is the consideration of needed transition services for the student including a statement of the interagency responsibilities or any needed interagency linkages.

(ii) Indicate that the LEA will invite the student; and

(iii) Identify any other agency that will be invited to send a representative.

(c) **Other methods to ensure parent participation**. If neither parent can attend, the LEA shall use other methods to ensure parent participation, including individual or conference telephone calls.

(d) **Conducting an IEP meeting without a parent in attendance**. A meeting may be conducted without a parent in attendance if the LEA is unable to convince the parents that they should attend. In this case the LEA must have a record of its attempts to arrange a mutually agreed on time and place, such as -

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) **Use of interpreters or other action, as appropriate**. The LEA shall take whatever action is necessary to ensure that the parent understands the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) **Parent copy of child's IEP**. The LEA shall give the parent a copy of the child's IEP at no cost to the parent and not later than ten (10) calendar days after ---

(1) an IEP has been developed for the child; and

(2) after the receipt of a request for a copy of the IEP.

300.346 Development, review, and revision of IEP.

(a) Development of IEP.

(1) General. In developing each child's IEP, the IEP team, shall consider -

(i) The strengths of the child and the concerns of the parents for enhancing the education of their child;

(ii) The results of the initial or most recent evaluation of the child; and

(iii) As appropriate, the results of the child's performance on any general State or district-wide assessment programs.

(2) Consideration of special factors. The IEP team also shall -

(i) In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language

and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(v) Consider whether the child requires assistive technology devices and services.

(b) Review and Revision of IEP. In conducting a meeting to review, and, if appropriate, revise a child's IEP, the IEP team shall consider the factors described in paragraph (a) of this section.

(c) Statement in IEP. If, in considering the special factors described in paragraphs (a)(1) and (2) of this section, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP.

(d) Requirement with respect to regular education teacher. The regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of—

(1) Appropriate positive behavioral interventions and strategies for the child; and

(2) Supplementary aids and services, program modifications or supports for school personnel that will be provided for the child.

(e) Construction. Nothing in this section shall be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

300.347 Content of IEP.

(a) **General**. The IEP for each child with a disability must include—

(1) A statement of the child's present levels of educational performance, including -

(i) How the child's disability affects the child's involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled children); or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(2) A statement of measurable annual goals, including benchmarks or short-term objectives, related to -

(i) Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum (i.e., the same curriculum as for nondisabled children), or for preschool children, as appropriate, to participate in appropriate activities; and

(ii) Meeting each of the child's other educational needs that result from the child's disability;

(3) A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the

child—

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved and progress in the general curriculum in accordance with paragraph (a)(1) of this section and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(4) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(3) of this section;

(5)(i) A statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment; and

(ii) If the IEP team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), a statement of

(A) Why that assessment is not appropriate for the child; and

(B) How the child will be assessed;

(6) The projected date for the beginning of the services and modifications described in paragraph (a)(3) of this section, and the anticipated frequency, location, and duration of those services and modifications; and

(7) A statement of -

(i) How the child's progress toward the annual goals described in paragraph (a)(2) of this section will be measured; and

(ii) How the child's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of -

(A) Their child's progress toward the annual goals; and

(B) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

(b) **Transition services**. The IEP must include—

(1) For each student with a disability beginning at age 14 (or younger, if determined appropriate by the IEP team), and updated annually, a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced-placement courses or a vocational education program); and

(2) For each student beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

(c) **Transfer of rights**. Beginning at least one year before a student reaches the age of majority (eighteen (18) years), the student's IEP must include a statement that the student has been informed of his or her rights under Part B of the Act, if any, that will transfer to the student on reaching the age of majority.

300.348 Agency responsibilities for transition services.

(a) If a participating agency, other than the LEA, fails to provide the transition services described in the IEP, the LEA shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

(b) Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

300.349 Private school placements by public agencies.

(a) Developing IEPs.

(1) Before a LEA places a child with a disability in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child.

(2) The LEA shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(b) Reviewing and revising IEPs.

(1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the LEA.

(2) If the private school or facility initiates and conducts these meetings, the LEA shall ensure that the parents and an agency representative—

(i) Are involved in any decision about the child's IEP; and

(ii) Agree to any proposed changes in the IEP before those changes are implemented.

(c) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the LEA.

300.350 IEP—accountability.

(a) **Provision of services**. Subject to paragraph (b) of this section, each LEA must —

(1) Provide special education and related services to a child with a disability in accordance with the child's IEP; and

(2) Make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.

(c) **Accountability**. The IDEA does not require that any agency, teacher, or other person

be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives.

(c) **Parent rights**. Nothing in this section limits a parent's right to ask for revisions of the child's IEP or to invoke due process procedures if the parent feels that the efforts required in paragraph (a) of this section are not being made.

Part D—Children in Private Schools
Children With Disabilities In Private Schools Placed Or Referred By LEAs

300.401 Responsibility of the LEA

Each LEA shall ensure that a child with a disability who is placed in or referred to a private school or facility by the LEA—

(a) Is provided special education and related services—

(1) In conformance with an IEP; and

(2) At no cost to the parents;

(b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs (including the requirements of these regulations); and

(c) Has all of the rights of a child with a disability who is served by a LEA.

300.402 Reserved

Children With Disabilities Enrolled By Their Parents in Private Schools When FAPE is at Issue

300.403 Placement of children by parents if FAPE is at issue.

(a) **General**. This part does not require an LEA to pay for the cost of education.

(b) including special education and related services, of a child with a disability at a

private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the LEA must still provide services to these students in the same manner as other children in private schools receive services under 3000.450-300.462.

(c) **Disagreements about FAPE**. Disagreements between a parent and a LEA regarding

the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures described in Part E of these regulations.

(c) **Reimbursement for private school placement**. If the parents of a child with a disability, who previously received special education and related services under the authority of a LEA, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the LEA had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

(d) **Limitation on reimbursement**. The cost of reimbursement described in paragraph

(c) of this section may be reduced or denied -

(1) If -

(i) At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the LEA to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the LEA of the information described in paragraph (d)(1)(i) of this section;

(2) If, prior to the parents' removal of the child from the public school, the LEA informed the parents, through the notice requirements described in Part E of these regulations, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) **Exception**. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement may not be reduced or denied for failure to provide the notice if -

(1) The parent is illiterate and cannot write in English;

(2) Compliance with paragraph (d)(1) of this section would likely result in physical or serious emotional harm to the child;

(3) The school prevented the parent from providing the notice; or

(4) The parents had not received notice, pursuant to section 615 of the Act, of the notice requirement in paragraph (d)(1) of this section.

300.404-300.449 Reserved.

Children With Disabilities Enrolled By Their Parents In Private Schools

300.450 Definition of "private school children with disabilities."

As used in this part, **private school children with disabilities** means children with disabilities enrolled by their parents in private schools or facilities.

300.451 Child find for private school children with disabilities.

(a) Each LEA shall locate, identify, and evaluate all private school children with disabilities, including religious-school children residing in the jurisdiction of the LEA. The activities undertaken to carry out this responsibility for private school children with

disabilities must be comparable to activities undertaken for children with disabilities in public schools.

(b) Each LEA shall consult with appropriate representatives of private school children with disabilities on how to carry out the activities described in paragraph (a) of this section.

300.452 Provision of services—basic requirement.

(a) **General.** Each LEA shall make a FAPE available to eligible students with disabilities who are enrolled by their parents in private schools.

(b) **LEA Responsibility**. Each LEA shall ensure that, an IEP is developed and implemented for each eligible child with a disability enrolled by their parents in a private school and that the child is afforded all of the rights of a child with a disability served by the LEA.

300.453 Reserved.

300.454 Services determined.

(1) A private school child with a disability has a right to a FAPE.

(2) Decisions about the services that will be provided to private school children with disabilities must be made by the IEP team.

300.455 Services provided.

(a) **General**.

(1) The services provided to private school children with disabilities by the LEA must be provided by personnel meeting the same standards as personnel providing services in the public schools.

(b) **Services provided in accordance with an IEP.**

(1) Each private school child with a disability who has been designated to receive special education and related services must have an IEP.

300.456 Location of services; transportation.

(a) **On-site**. Services provided to private school children with disabilities may be provided on-site at a child's private school, including a religious school.

(b)**Transportation**.

(1) **General**.

(i) If necessary for the child to benefit from or participate in the services provided under this part, a private school child with a disability must be provided transportation—

(A) From the child's school or the child's home to a site other than the private school; and

(B) From the service site to the private school, or to the child's home, depending on the timing of the services.

300.456(A) Non Public and State Operated School Programs.

(1) To be eligible for approval by the Rhode Island Department of Elementary and secondary Education, special education programs conducted in private and state-operated schools in Rhode Island shall meet the regulations governing the approval of school programs. Private and state operated school programs shall be evaluated in the same manner, on the same schedule and with the same criteria and procedures as utilized for public schools in Rhode Island and shall be subject to on-site visits by the Rhode Island Commissioner of Elementary and Secondary or the Commissioner's authorized representative as often as is deemed necessary by the RIDE. Approval of such programs shall be on a triennial basis.

(2) All special education programs in any private and state operated day or residential school shall meet the same standards as those established for public school programs.

(3) Private and state operated school programs shall provide related services by appropriately certified personnel in accordance with the needs of the students with disabilities to be served, as determined by the IEP process. Caseloads for specialized personnel shall be assigned based on the time required to meet the needs of children with disabilities, as determined by the IEP process.

(4) Monitoring of a child with a disability's progress in a private day or residential school program shall be conducted by the special education director or designee, trained in the child's area of need, who shall be from the school district where the child resides.

(5) Special Education programs for children with disabilities in state operated schools shall be monitored by the Rhode Island Department of Elementary and Secondary Education.

(6) Private day or residential programs shall employ a certified administrator of special education, whose basic responsibilities shall be the overall administration and supervision of the special education program, and whose schedule shall be determined based on the time required to meet the needs of the children with disabilities.

(7) Each private day and residential school program shall have a statement of financial stability which identifies sufficient assets to establish and maintain a satisfactory program of education on a continuing basis. The owner(s) of a school, whether for initial approval or renewal of approval, shall also furnish statements of income and retained earnings and changes in financial position. These statements shall include in a clearly identifiable manner, records of receipts and expenditures, personnel salaries, and tuition. All statements shall be prepared by a Public Accountant or Certified Public Accountant, but need not be certified by the Accountant or supported by an audit. These statements shall be accompanied by a notarized statement by the owner(s) or the director of the school that the financial statements are true and correct, and shall identify the name of the Public Accountant or Certified Public Accountant who prepared the statements.

(8) Information on tuition and/or fee schedule shall be submitted to the Rhode Island Department of Elementary and Secondary Education in accordance with forms and instructions supplied by the RIDE as part of the school approval application.

(9) Each non-public day and residential school program shall use and have available for inspection written administrative procedures that encompass the following:

(i) Provision for emergency and early termination of children including prior consultation with the special education director in the school district of the child's residence in order to provide for an orderly transfer of responsibility back to this special education director.

(ii) Provision of procedural safeguards which cover the same areas required for public schools.

(iii)Provision for parental involvement including parental education and counseling.

(iv)Provision for staff training.

(v)Provision of measures which protect all students from exposure to humiliation or verbal abuse or any form of corporal punishment that could be construed as cruel or severe.

(vi)Provision of written reports on each child which are mailed to the child's parents and the special education director in the child's resident school district at least as often as the public school district reports progress to parents of non disabled children.

300.456(B) State Responsibility.

In ensuring that each LEA meets their responsibilities under section 401 of these regulations, the RIDE shall—

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(b) Disseminate copies of applicable standards to each private school and facility to which a LEA has referred or placed a child with a disability; and

(c) Provide an opportunity for those private schools and facilities to participate in development and revision of State standards that apply to them.

300.457 Complaints and Due Process.

(a) Complaints. The procedures in 300.660-300-662 apply to complaints that a LEA has failed to meet their responsibility to provide FAPE to children enrolled in private schools under these regulations.

(b) Due Process. The procedures in 300.506-300.514 relating to mediation and due process hearings apply to complaints that a LEA has failed to meet their requirements under these regulations.

300.458 Separate classes prohibited.

A LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the student if—

(a) The classes are at the same site; and

(b) The classes include students enrolled in public schools and students enrolled in private schools.

300.459 Requirement that Funds Not Benefit a Private School.

(a) A LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The LEA shall use funds provided under part B of the Act to meet the special education and related services needs of students enrolled in private schools, but not for—

(1)The needs of a private school; or

(2) The general needs of the students enrolled in the private school.

300.460 Use of Public School Personnel.

A LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities---

(a) to the extent necessary to provide services under this part for private school children with disabilities; and

(b) If those services are not normally provided by the private school.

300.461 Use of Private School Personnel.

A LEA may use funds available under section 611 or 619 of the Act to pay for the services of an employee of a private school to provide services for private school children with disabilities if--
(a) The employee performs the services outside of his or her regular hours of duty; and
(b) The employee performs the services under public supervision and control.

300.462 Requirements concerning property, equipment, and supplies for the benefit of private school children with disabilities.

(a) A LEA must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the LEA acquires with funds under section 611 or 619 of the Act for the benefit of private school children with disabilities.

(b) The LEA may place equipment and supplies in a private school for the period of time needed for the program.

(c) The LEA shall ensure that the equipment and supplies placed in a private school—

(1) Are used only for Part B purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The LEA shall remove equipment and supplies from a private school if--

(1) the equipment and supplies are no longer needed for Part B purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment and supplies from other than Part B purposes.

(d) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

Part E—Procedural Safeguards

Due Process Procedures for Parents and Children

300.500 General responsibility of SEA, LEAs; definitions.

(a) **Responsibility of SEA and other public agencies**. The RIDE shall ensure that each LEA establishes, maintains, and implements procedural safeguards that meet the requirements of this part.

(b) **Definitions of "consent," "evaluation," and "personally identifiable."** As used in this part—

(1) **Consent** means that—

(i) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(ii) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(iii)(A) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

(B) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(2) **Evaluation** means procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs; and

(3) **Personally identifiable** means that information includes—

(i) The name of the child, the child's parent, or other family member;

(ii) The address of the child;

(iii) A personal identifier, such as the child's social security number or student number; or

(iv) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

300.501 Opportunity to examine records; parent participation in meetings.

(a) **General**. The parents of a child with a disability must be afforded an opportunity to—

(1) Inspect and review all education records with respect to—

(i) The identification, evaluation, and educational placement of the child; and

(ii) The provision of FAPE to the child; and

(2) Participate in meetings with respect to—

(i) The identification, evaluation, and educational placement of the child; and

(ii) The provision of FAPE to the child.

(b) **Parent participation in meetings**.

(1) Each LEA shall provide notice consistent with 300.345 to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (a)(2) of this section.

(2) A meeting does not include informal or unscheduled conversations involving LEA personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(c) **Parent involvement in placement decisions**.

(1) Each LEA shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

(2) In implementing the requirements of paragraph (c)(1) of this section, the LEA shall use procedures consistent with 300.345.

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the LEA shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by a group without the involvement of the parents, if the LEA is unable to obtain the parents' participation in the decision. In this case, the LEA must have a record of its attempt to ensure their involvement, including information that is consistent with the requirements of 300.345.

(5) The LEA shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English.

300.502 Independent educational evaluation.

(a) **General**.

(1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each LEA shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.

(3) For the purposes of this part—

(i) **Independent educational evaluation** means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the child in question; and

(ii) **Public expense** means that the LEA either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

(b) **Parent right to evaluation at public expense**. (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the LEA.

(2) If a parent requests an independent educational evaluation at public expense, the LEA must, without unnecessary delay, and not later than 15 calendar days from receipt of a request, either—

(i) Initiate a due process hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the LEA demonstrates in a hearing that the evaluation obtained by the parent did not meet agency criteria.

(3) If the LEA initiates a hearing and the final decision is that the LEA's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the LEA may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the LEA may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

(c) **Parent-initiated evaluations**. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation—

(1) Must be considered by the LEA, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented as evidence at a hearing under this part regarding that child.

(d) **Requests for evaluations by hearing officers**. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) **Agency criteria**.

(1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the LEA uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(2) Except for the criteria described in paragraph (e)(1) of this section, a LEA may not impose conditions or timelines related to obtaining an independent educational evaluation

at public expense.

300.503 Prior notice by the LEA; content of notice.

(a) **Notice**.

(1) Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time (ten school days) before the LEA—

(i) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(ii) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(2) If the notice described under paragraph (a)(1) of this section relates to an action proposed by the LEA that also requires parental consent under 300.505, the LEA may give notice at the same time it requests parent consent.

(b) **Content of notice**. The notice required under paragraph (a) of this section must include—

(1) A description of the action proposed or refused by the LEA;

(2) An explanation of why the agency proposes or refuses to take the action;

(3) A description of any other options that the agency considered and the reasons why those options were rejected;

(4) A description of each evaluation procedure, test, record, or report the LEA used as a basis for the proposed or refused action;

(5) A description of any other factors that are relevant to the LEA's proposal or refusal;

(6) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

(7) Sources for parents to contact to obtain assistance in understanding the provisions of this part.

(c) **Notice in understandable language**. (1) The notice required under paragraph (a) of this section must be—

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure—

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

300.504 Procedural safeguards notice.

(a) **General**. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, at a minimum—

(1) Upon initial referral for evaluation;

(2) Upon each notification of an IEP meeting;

(3) Upon reevaluation of the child; and

(4) Upon receipt of a request for due process under these regulations Part E 508.

(b) **Contents**. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available, and the State complaint procedures available relating to—

(1) Independent educational evaluation;

(2) Prior written notice;

(3) Parental consent;

(4) Access to educational records;

(5) Opportunity to present complaints to initiate due process hearings;

(6) The child's placement during pendency of due process proceedings;

(7) Procedures for students who are subject to placement in an interim alternative educational setting;

(8) Requirements for unilateral placement by parents of children in private schools at public expense;

(9) Mediation;

(10) Due process hearings, including requirements for disclosure of evaluation results and recommendations;

(11) Civil actions;

(12) Attorneys' fees; and

(13) The State complaint procedures including a description of how to file a complaint and the timelines under those procedures.

(c) **Notice in understandable language**. The notice required under paragraph (a) of this section must meet the requirements of 300.503(c) regarding content of notice.

300.505 Parental consent.

(a) **General**.

(1) Subject to paragraphs (a)(3), (b) and (c) of this section, informed parent consent must

be obtained before—

(i) Conducting an initial evaluation or reevaluation; and

(ii) Initial provision of special education and related services to a child with a disability.

(2) Consent for initial evaluation may not be construed as consent for initial placement described in paragraph (a)(1)(ii) of this section.

(3) Parental consent is not required before—

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(b) **Refusal**. If the parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the LEA may continue to pursue those evaluations by using the due process procedures or the mediation procedures if appropriate.

(c) **Failure to respond to request for reevaluation**.

(1) Informed parental consent need not be obtained for reevaluation if the LEA can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent has failed to respond.

(2) To meet the reasonable measures required in paragraph (c) (1) of this section, the LEA must use the procedures consistent with those in 300.345(d).

(d) **Documentation of Receipt of Consent.** Each LEA shall document the receipt of parental consent, whether written or verbal, and maintain as part of the child's educational record such documentation.

(e) **Limitation**. A LEA may not use a parent's refusal to consent to one service or activity under paragraphs (a) of this section to deny the parent or child any other service, benefit, or activity of the LEA, except as required by this part.

300.506 Mediation.

(a) **General**. The RIDE offers and implements a conflict resolution procedure called "mediation" to allow parties to disputes involving any matter described in these regulations, or whenever a due process hearing is requested, to attempt to reach resolution of differences of opinion between the disputing parties (parent and LEA).

(b) **Requirements**. The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process-

(i) Is voluntary on the part of the parties;

(ii) Is not used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under Part B of the IDEA; and

(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2)(i) The RIDE shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(ii) If a mediator is not selected on a random (e.g., a rotation) basis from the list described in paragraph (b)(2)(i) of this section, both parties must be involved in selecting the mediator and agree with the selection of the individual who will mediate.

(3) The State shall bear the cost of the mediation process.

(4) A party may request mediation by contacting the RIDE or the LEA. Requests for mediation received by a LEA shall be forwarded to RIDE within five (5) school days.

(5) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute. A mediation session will be conducted within ten (10) school days from the appointment of the mediator or within fifteen (15) days of the receipt of the request for mediation by the RIDE.

(6) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.

(7) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(c) **Impartiality of mediator**. (1) An individual who serves as a mediator under this part—

(i) May not be an employee of—

(A) Any LEA or any State agency ; or

(B) A SEA that is providing direct services to a child who is the subject of the mediation process; and

(ii) Must not have a personal or professional conflict of interest.

(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency solely because he or she is paid by the agency to serve as a mediator.

300.507 Impartial due process hearing; parent notice.

(a) **General**.

(1) A parent or LEA may initiate a hearing on any of the matters involving a LEA's proposal to initiate or change the identification, evaluation, or educational placement of a child or the provision of FAPE to the child; or the refusal to initiate or change the identification, evaluation, educational placement of an eligible child or the provision of FAPE to the child; and on any matter relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child, including claims arising under section 504 of the rehabilitation act of 1973 if that claim is a part of and not independent of the request for a due process hearing.

(2) When a hearing is initiated under paragraph (a)(1) of this section, the LEA shall

inform the parents of the availability of mediation.

(3) The LEA shall inform the parent of any free or low-cost legal and other relevant services available in the area if—

(i) The parent requests the information; or

(ii) The parent or the agency initiates a hearing under this section.

(b) **Agency responsible for conducting hearing**. The RIDE shall establish, implement, determine financial responsibility, and develop procedures for administering a system of due process under this section.

(c) **Parent notice to the LEA**.

(1) **General**. The LEA must have procedures that require the parent of a child with a disability or the attorney representing the child, to provide notice (which must remain confidential) to the LEA in a request for a hearing under paragraph (a)(1) (2) of this section.

(2) **Content of parent notice**. The notice required in paragraph (c)(1) of this section must include—

(i) The name of the child;

(ii) The address of the residence of the child;

(iii)The name of the school the child is attending;

(iv) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

(v) A proposed resolution of the problem to the extent known and available to the parents at the time.

(3) **Model form to assist parents**. The RIDE has developed a model form to assist parents in filing a request for due process that includes the information required in paragraphs (c)(1) and (2) of this section. The model form can be obtained by contacting the RIDE or the LEA.

(4) **Right to due process hearing**. A LEA may not deny or delay a parent's right to a due process hearing for failure to provide the notice required in paragraphs (c)(1) and (2) of this section.

300.508 Impartial hearing officer.

(a) A hearing may not be conducted—

(1) By a person who is an employee of the State agency or the LEA that is involved in the education or care of the child; or (2) By any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(c) The RIDE shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

300.509 Hearing rights.

(a) **General**. Any party to a hearing, has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;

(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(b) **Additional disclosure of information**.

(1) At least 5 business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) **Parental rights at hearings**. (1) Parents involved in hearings must be given the right to—

(i) Have the child who is the subject of the hearing present; and

(ii) Open the hearing to the public.

(2) The record of the hearing and the findings of fact and decisions must be provided by the LEA at no cost to parents.

(d) **Findings and decision to advisory panel and general public**. The public agency, after deleting any personally identifiable information, shall—

(1) Transmit the findings and decisions to the State advisory panel.

(2) Make those findings and decisions available to the public.

300.510 Finality of decision; appeal.

(a) **Finality of decision**. A decision made in a hearing is final except that any party involved in the hearing may appeal the decision to a civil court of competent jurisdiction.

(b) **Timeline to appeal**. The U.S. First Circuit Court of Appeals has established a deadline of thirty (30) days from receipt of the hearing decision in which to appeal a decision of a due process hearing decision to the Federal District Court for the District of

Rhode Island.

300.511 Timelines and convenience of hearings.

(a) The LEA and RIDE shall ensure that not later than 45 days after the receipt of a request for a hearing—

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) A hearing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) of this section at the request of either party.

(c) Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

300.512 Civil action.

(a) **General**. Any party aggrieved by the findings and decision made by a due process hearing officer has the right to bring a civil action with respect to the complaint. The action may be brought in any State court of competent jurisdiction or in a Federal District Court without regard to the amount in controversy.

(b) **Additional requirements**. In any action brought under paragraph (a) of this section, the court-

(1) Shall receive the records of the administrative proceedings;

(2) Shall hear additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

(c) **Jurisdiction of district courts**. The district courts of the United States have jurisdiction of actions brought under the Section 615 of the Act without regard to the amount in controversy.

(d) **Rule of construction**. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under RI Regulations 300.507 and 300.510 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.

300.513 Attorneys' fees.

(a) In any action or proceeding brought under the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

(b)(1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of the Act.

(2) Paragraph (b)(1) of this section does not preclude a LEA from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.

(c) A court awards reasonable attorney's fees under section 615(i)(3) of the Act consistent with the following:

(1) **Determination of amount of attorneys' fees**. Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(2) **Prohibition of attorneys' fees and related costs for certain services**.

(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if—

(A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

(B) The offer is not accepted within 10 days; and

(C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation that is conducted prior to the filing of a request for due process.

(3) **Exception to prohibition on attorneys' fees and related costs**. Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(4) **Reduction of amount of attorneys' fees**. Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that—

(i) The parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) the attorney representing the parent did not provide to the school district the appropriate information in the due process complaint..

(5) **Exception to reduction in amount of attorneys' fees**. The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the

State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.

300.514 Child's status during proceedings.

(a) Except for provided in 300.526, during the pendency of any administrative or judicial proceeding regarding a complaint for due process, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(c) If the decision of a hearing officer in a due process hearing agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents for purposes of paragraph (a) of this section.

300.515 Surrogate parents.

(a) **General**. The RIDE shall ensure that the rights of a child are protected if—

(1) No parent can be identified;

(2) The LEA, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) the child is a ward of the State under the laws of the State.

(b) **Duty of public agency**. The duty of RIDE includes the assignment of an individual to act as a surrogate for the parents. This must include a method—

(1) For determining whether a child needs a surrogate parent; and

(2) For assigning a surrogate parent to the child.

(c) **Criteria for selection of surrogates**.

(1) RIDE may select a surrogate parent in any way permitted under State law.

(2) A person selected as a surrogate—

(i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;

(ii) Has no interest that conflicts with the interest of the child he or she represents; and

(iii) Has knowledge and skills that ensure adequate representation of the child.

(3) RIDE may select as a surrogate a person who is an employee of a nonpublic agency that only provides non-educational care for the child and who meets the standards in paragraphs (c)(2)(ii) and (iii) of this section.

(d) **Non-employee requirement; compensation**. A person who otherwise qualifies to be a surrogate parent under paragraph (c) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(e) **Responsibilities**. The surrogate parent may represent the child in all matters relating to—

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

300.516 Reserved.

300.517 Transfer of parental rights at age of majority.

General. When a student with a disability reaches the age of majority under State law (age 18) that applies to all students (except for a student with a disability who has been determined to be incompetent under State law)—

(1)(i) The LEA shall provide any notice required by this part to both the individual and the parents; and

(ii) All other rights accorded to parents under IDEA transfer to the student; and

(2) All rights accorded to parents under IDEA transfer to students who are incarcerated in an adult or juvenile, State or local correctional institution.

(3) Whenever the transfer of rights to the student at age eighteen (18) under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the LEA shall notify the individual and the parents of the transfer of rights.

Discipline Procedures

300.518 General.

Children with disabilities must be afforded all of the due process rights available to non-disabled children. Children with disabilities are also entitled to the due process provisions described in these regulations.

300.519 Emergency Removals from School .

(a) If school personnel determine that a child with a disability presents an immediate threat to him or herself or to others, the child may be removed from school for the remainder of the school day regardless of the number of days of suspension the child had already accrued during that school year.

(b) For any emergency removal under (a) the LEA must follow the requirements of this section.

300.520(A) Removals for less than ten (10) days cumulative.

(a) To the extent the removal would be applied to children without disabilities, school personnel may remove a child with a disability from the child's current educational placement for ten (10) school days cumulative during the course of a school year.

(b) During the first ten (10) school days of removal (cumulative) during the course of a school year, a LEA may, but is not required to-

(1) Provide educational services to the child;

(2) Conduct a manifestation determination prior to the disciplinary removal;

(3) Perform a functional behavioral assessment of the child; or

(4) Develop a behavioral intervention plan to address the behavioral factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.

(c) The basic procedural due process rights afforded children without disabilities are the same for children with disabilities.

300.520(B) Removals for more than ten (10) days cumulative.

(a) **General.** (1) After a child with a disability has been removed from his or her current placement for more than ten (10) school days cumulative in the same school year, in accordance with (c)(1) of this section, **(functional behavioral assessment and behavioral intervention plan)** and 300.523 **(manifestation determination)** during any subsequent days of removal the LEA must provide the child with FAPE , and with the services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP, as determined by the child's IEP team.

(2) **Change to Interim Alternative Educational Setting**. A LEA may change the placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days, if -

(i) The child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or

(ii) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

(b) **Functional Behavioral Assessment/ Behavioral Intervention Plan** (1) Either before or not later than 10 business days after either first removing the child for more than 10 school days in a school year —

(i) If the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the removal described in paragraph (a) of this section, the agency shall convene an IEP meeting to develop an assessment plan.

(ii) If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and, modify the plan and its implementation as necessary, to address the behavior.

(2) As soon as practicable after developing the plan described in paragraph (b)(1)(i) of this section, and completing the assessments required by the plan, the LEA shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

(c)(1) If subsequently, a child with a disability who has a behavioral intervention plan and who has been removed from the child's current educational placement for more than 10 school days in a school year is subjected to another removal from school, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.

(2) If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

(d) For purposes of this section, the following definitions apply:

(1) **Controlled substance** means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) **Illegal drug**—

(i) Means a controlled substance; but

(ii) Does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) **Weapon** has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

(f) In addition to all procedural due process rights referred to herein, children with disabilities must be afforded the same basic procedural due process rights afforded children without disabilities in the discipline context.

300.521 Authority of hearing officer.

A hearing officer under section 615 of the Act and 300.528 may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing -

(a) Determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;

(b) Considers the appropriateness of the child's current placement;

(c) Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

(d) Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher, meets the requirements of an interim alternative educational setting as required in 300.522.

(e) As used in this section, the term **substantial evidence** means beyond a preponderance of the evidence.

300.522 Interim Alternative Educational Setting.

(a) **General**. The interim alternative educational setting must be determined by the IEP team.

(b) **Additional requirements**. Any interim alternative educational setting in which a child is placed must—

(1) Be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and

(2) Include services and modifications to address the student's behavior that are designed to prevent the behavior from recurring.

300.523 Manifestation determination.

(a)**General**. If an action is contemplated regarding a student's behavior requiring a removal from school for more than ten (10) school days cumulative during the course of a school year, before the student can be further removed from school (for the 11th day or longer) for a violation of any rule or code of conduct that applies to all children, the LEA must first:

(1) notify the parent of the decision of the LEA to seek removal;

(3) provide the parents with the procedural safeguards notice described in 300.504, and

(4) reconvene an IEP meeting to conduct a manifestation determination to review the student conduct in relation to the child's disability and the behavior subject to the disciplinary action.

(b) **Individuals to carry out review**. A review described in paragraph (a) of this section must be conducted by the IEP team and other qualified professionals, as appropriate, in an IEP meeting.

(c) **Conduct of review**. In carrying out a review described in paragraph (a) of this section, the IEP team and other qualified personnel may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team and other qualified personnel -

(1) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including -

(i) Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the child;

(ii) Observations of the child; and

(iii) The child's IEP and placement; and

(2) Then determine that -

(i) In relationship to the behavior subject to disciplinary action, the child's IEP and

placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

(ii) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

(iii) The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

(d) **Decision**. If the IEP team and other qualified personnel determine that any of the standards in paragraph (c)(2) of this section were not met, the behavior must be considered a manifestation of the child's disability.

(e) **Meeting**. The review described in paragraph (a) of may be conducted at an IEP meeting that is convened for other reasons not exclusive of the manifestation determination.

(f) **Deficiencies in IEP or placement**. If, in the review in paragraphs (b) and (c) of this section, a LEA identifies deficiencies in the child's IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies.

300.524(A) Determination that behavior was not a manifestation of a disability.

(a) **General**. If the IEP team determines the behavior of the child was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except the child must continue to receive services as required in RI Regulation 300.521 and 300.121.

(b) **Additional requirement**. If the LEA initiates disciplinary procedures applicable to all children, the LEA shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

(c) **Child's status during due process proceedings**. Except as provided in the interim alternative educational setting described in RI Regulation 300.521, if a parent requests a hearing to challenge a manifestation determination that the behavior of the child was not a manifestation of the child's disability the child remains in their current placement prior to the disciplinary action sought by the LEA.

300.524(B) Determination that child's behavior is related to the child's disability.

General. If the IEP team determines the child's behavior is related to the child's disability, the child cannot be further removed from school for that behavior if the child has been removed from school for more than ten school days cumulative during the course of the school year except as ordered by a hearing officer pursuant to a due process hearing. The LEA shall conduct a functional behavioral assessment and develop a behavioral intervention plan as required by 300.520(A).

300.525 Parent appeal.

(a) **General**.

(1) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement regarding an interim alternative educational placement, the parent may request a hearing.

(2) The RIDE shall arrange for an expedited hearing in any case described in paragraph (a)(1) of this section if a hearing is requested by a parent.

(b) **Review of decision**.

(1) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the LEA has demonstrated that the child's behavior was not a manifestation of the child's disability.

(2) In reviewing a decision to place the child in an interim alternative educational setting, the hearing officer shall apply the standards in Part E, 300.522 of these regulations.

300.526 Provision of Special Education and Related Services during appeal.

(a) **General**. If a parent requests a hearing or an appeal regarding a disciplinary action to challenge the interim alternative educational setting or the manifestation determination, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in RI Regulation 300.520 or 300.522, whichever occurs first, unless the parent and the State agency or local educational agency agree otherwise.

(b) **Current placement**. If a child is placed in an interim alternative educational setting pursuant to 300.520 or 300.521 and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the child must remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in paragraph (c) of this section.

(c) **Expedited hearing**.

(1) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the LEA may request an expedited due process hearing.

(2) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in RI Regulation 300.522.

(3) A placement ordered pursuant to paragraph (c)(2) of this section may not be longer than 45 days.

(4) The procedure in paragraph (c) of this section may be repeated, as necessary.

300.527 Protections for children not yet eligible for special education and related services.

(a) **General**. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior that results or resulting in the removal of a child from school or placement of a child in an IAES, may assert any of the protections provided for in this part if the LEA had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) **Basis of knowledge**. An LEA must be deemed to have knowledge that a child is a child with a disability if -

(1) The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the child is in need of special education and related services;

(2) The behavior or performance of the child demonstrates the need for these services.

(3) The parent of the child has requested an evaluation of the child ; or

(4) The teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of the agency or to other personnel in accordance with the agency's established child find or special education referral system.

(c) **Exception**. The LEA would not be deemed to have knowledge under paragraph (b) of this section if, as a result of receiving the information specified in that paragraph, the LEA—

(1) Either—

(i) Conducted an evaluation under these regulations, and determined that the child was not a child with a disability; or

(ii) Determined that an evaluation was not necessary; and

(2) Provided notice to the child's parents of its determination pursuant to 300.503.

(d) **Conditions that apply if no basis of knowledge**.

(1) **General**. If a LEA does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.

(2) **Limitations**.

(i) if a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of the IDEA and these regulations.

300.528 Expedited due process hearings.

(a) Expedited due process hearings must:

(1) Meet the requirements of 300.507, except that for purposes of expedited due process hearings under 300.520(A)-300.526, a party has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least two (2) business days before the hearing ; and

(2) Be conducted by a due process hearing officer who satisfies the requirements of 300.508.

(b)(1) The timeline for a due process hearing officer to schedule an expedited hearing and render a decision shall not exceed ten (10) business days from the request, except the hearing officer may grant an extension not to exceed forty-five (45) calendar days from the receipt of the original hearing request.

(2) The timeline established under paragraph (b)(1) of this section must be the same for hearings requested by parents or public agencies.

(c) The procedural rules for due process hearings under 300.507 apply to expedited hearings.

(d) The decisions on expedited due process hearings are final unless appealed consistent with 300.510.

300.529 Referral to and action by law enforcement and judicial authorities.

(a) Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b)(1) A LEA reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

(2) A LEA reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

Procedures For Evaluation And Determination Of Eligibility

300.530 Reserved.

300.531 Initial Evaluation.

(a) Each LEA shall ensure that:

(i) Within ten (10) school days of the receipt of a referral for special education services a team of qualified professionals and the parent that includes the individuals described in 300.344 and other qualified professionals, as appropriate, known as the Evaluation Team, meet to determine if a special education evaluation is needed.

(ii) The initial evaluation (or re-evaluation) shall commence no later than ten (10) school days after the receipt of parental consent to conduct such an evaluation. If the parent does not notify the LEA within five (5) school days of their consent to evaluate, the team must document its efforts to obtain consent. If the LEA has not obtained parental consent to evaluate within fifteen (15) school days of the request to evaluate, the Team must reconvene to consider what action the LEA will take including, (as appropriate) the requirements described in 300.505(b) and (c), 300.345(d).

(iii) A full individual initial evaluation is conducted before the initial provision of special education and related services

(b) Within forty-five (45) school days of receipt of parental consent to an initial evaluation:

(i) the child is evaluated; and

(ii) a written report of the evaluation team is made available to the LEA and the parent(s); and a team of qualified professionals and the parent(s) of the child meet as an eligibility team to determine whether the child is a child with a disability and in need of special education and related services.

(c) If determined eligible under this part, an IEP meeting is conducted and an IEP is developed and special education and related services are made available to the child in accordance with an IEP within fifteen (15) school days of the eligibility determination and not more than sixty (60) school days of the receipt of parental consent to conduct the initial evaluation.

(d) If it is determined that an initial evaluation is not needed, the evaluation team shall consider referring the student's case to either the LEA's teacher support team or the LEA's section 504 team. (Section 504 of the Rehabilitation Act of 1973). The parent(s) must be notified of the decision of the team not to evaluate within ten (10) school days.

300.532 Evaluation procedures.

Each LEA shall ensure, at a minimum, that the following requirements are met:

(a)(1) Tests and other evaluation materials used to assess a child—

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis; and

(ii) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and

(2) Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.

(b) A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining—

(1) Whether the child is a child with a disability as defined in these regulations; and

(2) The content of the child's IEP.

(c)(1) Any standardized tests that are given to a child—

(i) Have been validated for the specific purpose for which they are used; and

(ii) Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.

(2) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report.

(d) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(e) Tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(f) No single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.

(g) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence,

academic performance, communicative status, and motor abilities.

(h) In evaluating each child with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(i) The LEA uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(j) The LEA uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

(k) A vocational / career assessment shall commence with every child with a disability at the age of fourteen (14).

(l) In addition, when recommended by the **evaluation team** including the parent, specific assessments shall be required in order to determine certain disabilities. These disabilities include:

(1) Orthopedic Impairment. An assessment by a registered physical and/or occupational therapist under the direction of a licensed physician.

(2) Speech, Language or Hearing Disorder. An audiological assessment administered by a licensed audiologist, an otological assessment administered by licensed otologist, and/or a speech and language assessment administered by a speech/ language pathologist.

(3) Visual Impairment. An assessment including the exploration of the need for low vision services, examination of mobility and orientation skills, and visual communication skills.

(4) Mental Retardation. An adaptive behavior assessment and a sociological assessment.

(5 Emotional Disturbance. A specific clinical psychological or psychiatric assessment must be conducted for a student to be identified as having an emotional disturbance. A functional behavioral assessment and a sociological assessment are also required.

(6) Specific Learning Disability. An assessment that meets the requirements of sections 300.540-543.

300.533 Determination of needed evaluation data.

(a) **Review of existing evaluation data**. As part of an initial evaluation and as part of any reevaluation, a Team of Qualified Professionals and the Parent(s), that includes the individuals described in the membership of the evaluation team for an initial evaluation (300.532) and the IEP team for a reevaluation (300.344), and other qualified professionals, as appropriate, shall –

(1)Review existing evaluation data on the child, including—

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based assessments and observations; and

(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what

additional data, if any, are needed to determine -

(i) Whether the child has a particular category of disability, or, in case of a reevaluation of a child, whether the child continues to have such a disability;

(ii) The present levels of performance and educational needs of the child;

(iii) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

(b) **Need for additional data**. The LEA shall administer tests and other evaluation materials as may be needed to produce the data identified under paragraph (a) of this section.

(c) **Requirements if additional data are not needed**.

(1) If the determination under paragraph (a) of this section is that no additional data are needed to determine whether the child continues to be a child with a disability, the LEA shall notify the child's parents—

(i) Of that determination and the reasons for it; and

(ii) Of the right of the parents to request an assessment to determine whether, for purposes of services under this part, the child continues to be a child with a disability.

(2) The LEA is not required to conduct the assessment described in paragraph (c)(1)(ii) of this section unless requested to do so by the child's parents.

300.534 Determination of eligibility.

(a) Upon completing the administration of tests and other evaluation materials -

(1) A Team of qualified professionals and the parent(s) of the child must determine whether the child is a child with a disability; and

(2) The LEA must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

(b) A child may not be determined to be eligible under this part if—

(1) The determinant factor for that eligibility determination is—

(i) Lack of instruction in reading or math; or

(ii) Limited English proficiency ; and

(2) The child does not otherwise meet the eligibility criteria as a child with a disability who needs special education.

(c)(1) A LEA must evaluate a child with a disability in accordance with these regulations before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (c)(1) of this section is not required before the termination of a student's eligibility due to graduation with a regular high school diploma, or exceeding the age eligibility for FAPE.

300.535 Procedures for determining eligibility for special education and related services.

(a) In interpreting evaluation data for the purpose of determining if a child is a child with a disability, and the educational needs of the child, each LEA shall—

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and

(2) Ensure that information obtained from all of these sources is documented and carefully considered.

(3) The Team shall develop a written report of its findings which is made available to the LEA and the parent(s). If the findings are that the child is eligible for special education services the report is also made available to the IEP Team.

(b) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child within sixty (60) school days of the receipt of the consent to evaluate.

300.536 Reevaluation.

Each LEA shall ensure—

(a) That the IEP of each child with a disability is reviewed and

(b) That a reevaluation of each child, is conducted if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, but at least once every three years.

(c) If as a result of the reevaluation the team described in Regulation 300.344 determines the child is a child with a disability under the Act, an IEP meeting must be scheduled within fifteen (15) school days after the determination of eligibility has been made.

300.537-300-539 Reserved.

Additional Procedures For Evaluating Children With Specific Learning Disabilities

300.540 Additional team members.

The determination of whether a child suspected of having a specific learning disability is a child with a disability, must be made by the child's parents and a Team of qualified professionals which must include—

(a)(1) The child's regular teacher; or

(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or (3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

300.541 Criteria for determining the existence of a specific learning disability.

(a) A Team may determine that a child has a specific learning disability if—

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, if provided with learning experiences appropriate for the child's age and ability levels; and

(2) The Team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

(i) Oral expression.

(ii) Listening comprehension.

(iii) Written expression.

(iv) Basic reading skill.

(v) Reading comprehension.

(vi) Mathematics calculation.

(vii) Mathematics reasoning.

(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of—

(1) A visual, hearing, or motor impairment;

(2) Mental retardation;

(3) Emotional disturbance; or

(4) Environmental, cultural or economic disadvantage.

300.542 Observation.

(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.

(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

300.543 Written report.

(a) For a child suspected of having a specific learning disability, the documentation of the team's determination of eligibility, must include a statement of—

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination;

(3) The relevant behavior noted during the observation of the child;

(4) The relationship of that behavior to the child's academic functioning;

(5) The educationally relevant medical findings, if any;

(6) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and

(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(b) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

300.544-300.549 Reserved.

Least Restrictive Environment (LRE)

300.550 General LRE requirements.

(a) Each LEA shall ensure—

(1) That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(2) That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(b) That teachers and administrators are fully informed about their responsibilities for implementing the requirements of this section (LRE) and that they are provided with technical assistance and training necessary to assist them in this effort.

300.551 Array of Special Education Services.

(a) Each LEA shall ensure that an array of special education services is available to meet the needs of children with disabilities.

(1) Including the alternative placements listed in the definition of special education under these regulations at 300.26 (instruction in regular classes, special classes, special schools, home instruction, instruction in hospitals and institutions and in other settings). Home instruction is to be used only in instances where the child with a disability's health impairs the child's ability to attend school. The home instruction provided must be at least 5 hours per week at the elementary level and 6 hours per week at the secondary level. If a child with a disability is unable to attend school due to a health reason, the goal is to continue the child's education as fully as possible. Any limits on the type and

amount of service provided to a child confined to home or hospital should be determined by the IEP team and based upon the health condition of the child.

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

300.551(A) Array of Special Education Programs.

Responsibility. School districts shall make available to children with disabilities the following continuum of special education programs:

(1) Full-time placement of the child in a regular education classroom with special education consultation in the form of services, materials, equipment, or aid to the child's regular education teachers, or to the regular education, subject-matter teachers and to the child's parent(s) by special education teachers, together with other appropriately certified specialists who provide related services as defined in these regulations at 300.136.

(2) Part-time placement in a regular education classroom with supplementary part-time placement for a portion of the school day or of the school week in a room or another set-aside area for intensive, individual or small group instruction by special education teachers, together with appropriately certified specialists providing related services as defined in 300.136 of these regulations. These professionals shall also consult with the child's regular education classroom teachers and with the child's parent(s).

(3) Any child with a disability in special education classes for less than fifty per cent (50) of their day, may be provided services by special education teacher. If children with disabilities receive fifty per cent (50) or more of their instructional program in special education classes, then self-contained special education class size regulations apply.

(4) Part-time placement in a regular education classroom with supplementary part-time placement in a self-contained special education classroom for the purpose of intensive and continuous support by special education teachers together with other appropriately certified specialists providing related services. These professionals shall also consult with the child's regular education classroom teachers and with the child's parent(s).

(5) Full-time placement in a self-contained, special education classroom integrated in a school district building. Placement shall be based on homogeneous grouping according to the similarity of disability and developmental level for the purpose of providing constant and repetitive approaches to academic and social problems taught by a special education teacher, together with other appropriately certified specialists providing related services. These professionals shall also consult with the child's parents.

(6) Home or hospital instruction provided by a special education teachers, regular education classroom teachers or regular education, subject-matter teachers, together with other appropriately certified specialists providing related services, as needed; to any child with a disability whose health status warrants home or hospital instruction.

(7) Special education day school placement in a separate public school or non-public

facility whose special education program has been approved by the Rhode Island Commissioner of Elementary and Secondary Education .

(8) Special education residential school placement in a separate public or non-public facility whose special education program has been approved by the Rhode Island Commissioner of Elementary and Secondary Education. Other programs and services which shall be provided to students with disabilities are:

A continuum of services will be available for all students in Transition, which includes the planning and delivery of services that will support students in pursuing their goals in: Post-Secondary Education and Training, Employment, including Supported Employment, Independent Living and Community Participation. Design of services in each area will consider the use of instruction, related services (including employment development, job coaching, etc.), community experiences (including the provision of instruction in community settings) and if appropriate, the acquisition of daily living skills and functional vocational evaluation as part of on-going vocational assessment.

300.551(B) Array of Educational Settings for Children Aged Three (3) through Five (5).

Responsibility. School districts shall make available to each child with a disability, aged three (3) through (5) years old, a program which represents the least restrictive environment (LRE) and the appropriate placement given the student's individualized education program (IEP) or individualized family service plan (IFSP). Unless the individualized education program (IEP) or individualized family service plan (IFSP) requires otherwise, special education and related services shall be provided in that setting in which the child would normally be placed if he or she did not have a disability. The RIDE has guidelines to assist IEP teams in determining delivery of services decisions. The array of educational settings shall include the following placement opportunities:

(1) Temporary placement in any educational setting as described in this Section, for a period of no more than thirty (30) days, when necessary to aid in determining educational objectives and the appropriate placement for an eligible child with a disability. Prior to such placement, an interim individualized education program (IEP) or individualized family service plan (IFSP) shall be developed which specifies the conditions and timelines for the temporary placement. Upon the close of the interim period, an individualized education program (IEP) or individualized family service plan (IFSP) meeting shall be conducted to finalize the child's individualized education program (IEP) or individualized family service plan (IFSP).

(2) Placement in an early childhood setting with on-site consultation by an early childhood special educator and/or provider(s) of related services to the general education teacher and/or to the family and, when indicated by the IEP or IFSP, direct intervention with the child. Early childhood settings include, but are not limited to: general kindergarten classes, public and non-public preschools, Head Start programs, early care and education centers, home/early childhood combinations, home/Head Start combinations, or home based child care, which meet federal or state requirements. In an early childhood setting children receive all of their special education and related services in educational programs designed primarily for children without disabilities.

(3) Placement in a preschool class designed primarily for preschool children with disabilities and including children without disabilities that is located in a public school building. The maximum class size shall be no more than fifteen (15) children with less than fifty percent (50%) being children with disabilities. The staff shall include at a minimum, an early childhood special educator and teacher assistant with the provision of additional staff as indicated by the needs of the children and their IEPs or IFSPs.

(4) Home-based special education and, where appropriate, related services provided to the child together with his or her parent(s) or primary care provider. Home visits shall include instruction for the parent or primary care provider, demonstration of specific tasks and provision of developmental toys and materials for the parents or primary care provider to use with the child. A home-based program may supplement placement in another program option or, for pre-kindergarten-aged students be available as the primary placement, unless the child's needs, as determined by the evaluation process, can more appropriately be met in a group setting. When implemented as the primary placement, home visits shall be scheduled at least weekly and in accordance with the IEP or IFSP.

(4) Placement at home or in an early childhood setting with supplementary placement in a early childhood special education setting for a portion of the school day or week.

(5) Full-time placement in early childhood special education setting which is located in a public school building or other community based early childhood facility.

(6) Placement in a special education day school.

(7) Placement in a residential special education school.

300.551(C) High School Diploma.

Each LEA shall determine on an individual basis, whether or not the child with a disability is able to meet the requirements for the high school diploma. The LEA must also make determinations of those modifications and accommodations to the regular program which, if in place, will provide the child with a disability equal opportunity to attain the diploma. If a child with a disability meets the requirements for the diploma, it shall not differentiate, in course or program, from the diploma received by children who do not have disabilities. LEAs shall notify the parent(s) of children with disabilities in advance (at least eighteen (18) months prior to the projected date of graduation), if the successful completion of the IEP will not result in the award of a diploma, so that the parent(s) will have opportunity to seek review of this decision. Children with disabilities who have not met the requirements for the high school diploma may be awarded certificates of participation or certificates of attendance upon successful completion of the twelfth year of their particular program, or at a later time, and participate in graduation ceremonies to receive their certificates. These children with disabilities continue to be entitled to a FAPE until they attain age 21, or such time as they receive the regular high school diploma.

300.552 Criteria for Instructional Programs.

300.552(A) Pre-School.

(1)All preschool children (ages 3 to 6) with disabilities shall receive an IEP or IFSP

suited to their particular needs which shall include, but not be limited to, language development, symbol recognition, communication and socialization skills, health, perceptual and sensory-motor development, art, music and physical education.

(2)The maximum size of a self-contained special class whether full time or part time for pre-school children with mild or moderate disabilities shall be limited to eight (8) children if there is no teacher assistant. With the equivalent of a full-time teacher assistant, the maximum class size allowable shall be ten (10) children. Maximum class size for pre-school aged children with severe or profound mental retardation or multiple disabilities shall not exceed six (6) children and shall have assistance from a full-time teacher assistant if the number exceeds three (3) children.

(3)The class size described in section (2) of this regulation represents the totalnumber of students that can be assigned to the teacher who is assigned to that class. That class size is the maximum for that teacher's total caseload, regardless of the number of students physically present in that class at any one time.

(4)All pre school aged children with disabilities in need of physical or occupational therapy shall receive these services from a physical or occupational therapist as indicated by the evaluation process and described in the IEP. These services shall include direct service to these children and consultation with the classroom teacher and parent(s).

(5)Each pre-school aged class shall have assistance from other appropriate related service personnel on an as needed basis, as determined by the evaluation process and described in the IEP.

(6)Related services personnel, together with the teacher and the teacher assistant, shall participate and consult in an on-going evaluation process in order to continuously refine and delineate the needs of the pre-school aged child and the program.

300.552(B) School Age Children.

(1) Self-contained special classes whether part-time or full-time for school aged children with mild and moderate disabilities shall be limited to eight (8) children unless there is an equivalent of a full-time teacher assistant in which case the m maximum number allowable shall be ten (10) children. When a work placement program is being conducted at the senior high school level whereby half of the children with disabilities are involved in out-of-school work placement, there shall be a special education teacher in the classroom and at least one (1) other special education teacher employed in the coordination and counseling of work placement activities. When half of the class is on work placement, the maximum size of the class may exceed ten (10) children with disabilities with the equivalent of a full-time teacher assistant, but in no case shall the class size exceed a maximum of twenty (20) children with disabilities. Maximum class size for children with severe, profound or multiple disabilities shall not exceed six (6) children and shall include a full-time teacher assistant when the class size exceeds three (3) children.

(2) The class size described in section (1) of this regulation represents the total number of students assigned to the particular teacher assigned to that class comprising that teachers total caseload, regardless of the number of students physically present in that class at any one time.

(3) School aged children with severe, profound or multiple disabilities shall receive related services from a full-time physical and/or occupational therapist at least one (1) day per week unless otherwise indicated by the evaluation process and described in the IEP. These services shall include direct service to these children and consultation with the classroom teacher and parent(s). Other related services should be on an as needed basis.

Each school-aged child with a disability shall have ready access to materials, equipment, and other services that are customarily available to children in regular education classes.

Each school-aged child with a disability shall have assistance from appropriate related services personnel on an as-needed basis as determined by the evaluation process.

Teachers, teachers' assistants, and related services personnel shall participate and consult in an ongoing evaluation process in order to continuously refine and delineate the needs of each school-aged child with a disability and of the special education program.

300.552(C) Resource Programs.

Resource program personnel shall provide and/or participate in the following activities:

Consultation with and inservice training of teachers.

Performance of educational evaluations and differential diagnostic assessments

Behavioral analysis

Development of prescriptive educational supports including behavior intervention techniques.

Individual and small group tutoring

Consultation with other professionals and parents.

Each resource program shall have available the related services personnel as specified by the evaluation process for each child with a disability. The resource program shall also serve as a transitional placement for children with disabilities preparing to enter or re-enter a regular education class(es).

Related services personnel, together with teacher and the teacher's teacher assistant, shall participate and consult in an ongoing evaluation process in order to continuously refine and delineate the needs of the student with a disability and the program.

Each school district must submit to RIDE a description of each of its special education resource programs. Caseloads for these programs shall not exceed thirty (30) children with disabilities per special education resource teacher. A school district may request approval from the Rhode Island Commissioner of Elementary .and Secondary Education for an exception to this caseload requirement.

300.552(D) Regular Education Classes.

(a) Placement of students with disabilities in the least restrictive environment (LRE) shall include regular education class when determined by the evaluation process. Prior to placement of a student with a disability in a regular education classroom of any given school, both the building principal and the classroom teachers shall be provided with

adequate orientation to allow them to implement the child's individualized education program (IEP). This orientation shall be provided by the participation of the teachers and principal in the development of the program and by a staffing of the program for the teachers and building principal with the Individualized Education Program (IEP) Team. As soon as feasible after placement the building principal and the regular education teachers shall participate in an appropriate, prescribed inservice program.

(b) section (a) of this regulation shall not delay the placement of a student with a disability into an educational program or school.

(c) Local agreements relative to class size or the composition of classes cannot supercede the recommendations made by the IEP team relative to the most appropriate setting for a child with a disability to be educated.

(d) Each child with a disability placed in a regular education classes shall have available the related services personnel as determined by the evaluation process.

300.552(E) Homebound and Hospital Instructional Programs.

Homebound and hospital instruction shall be determined in accordance with these regulations including 300.552(f)

(a) Homebound Instructional Programs.

(1) The home atmosphere shall be conducive to learning. Special conditions recommended by the physician shall be observed.

(2) The minimum number of hours of instruction shall be five (5) hours per school week at the elementary level of education and six (6) hours at the secondary level of education unless fewer hours are recommended by the physician. Depending on the physical condition of the child, a number of instructional hours greater than the minimum number of hours required per week are permissible .

(3) A complete record of homebound teaching activities shall be maintained.

(4) Homebound instruction shall be coordinated with the work of the regular education class so that return to school (if this is possible) will require little readjustment, or so that the long-term homebound instruction may approximate the regular education curriculum to the highest degree possible.

(5) The use of a home-to-school telephone system should be employed whenever possible. In such cases, however, a teacher should provide instruction in the student's home for at least one (1) hour each school week.

(6) Children with disabilities who receive homebound instruction shall be provided with summer tutoring, if they are unable to complete their current school year because of health reasons.

(7) Teachers of homebound instruction shall hold Rhode Island teaching certificates in the area appropriate to educate and provide related services to the student with a health impairment, a physical disability or to the student's disability condition.

(8) School districts shall not use a home tutoring programs as a substitute for in-school programs nor as a means of excluding students with disabilities from in-school programs.

(b) Hospital Instructional Programs.

Hospital special education instructional programs shall meet the same criteria as that specified for homebound instructional programs when dealing with acute medical problems. In addition, private and State hospitals wishing to establish their in-patient educational programs or out-patient instructional programs must be approved by the Rhode Island Commissioner of Elementary and Secondary Education before they may operate such programs in Rhode Island and shall follow the same procedure and criteria for approval as outlined for non-public schools and State-operated school programs.

(c) Certification of Hospital Teaching Personnel.

(1) All teachers employed in hospital programs shall be trained and certified to provide special education in the area of basic disability for which the hospital program is established.

(2) If a general hospital, organized to provide educational programs to children with normal intelligence who have physical impairments or health impairments, should receive students who have additional disability conditions, then these students shall receive the educational services prescribed by the public school evaluation process in a manner that will allow these educational services to be tailored to the child's current medical condition and the uniqueness of the hospital environment.

(d) In determining the educational services for a child with a disability in homebound and hospital instruction programs, the IEP team shall also consider whether the child is in need of an extended school year program, as required by these regulations at 300.309.

300.552(F) Services.

In determining the educational services for a child with a disability, including a preschool child with a disability, each LEA shall ensure that—

(a) The services decision—

(1) Is made by an IEP Team, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the service options; and

(2) Is made in conformity with the LRE provisions of this part, including 300.550-300.551.

(b) The child's special education and related services —

(1) Are determined at least annually;

(2) Are based on the child's IEP; and

(3) Are as close as possible to the child's home.

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs.

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

(f) In providing services to children with disabilities in special education classes the age range of the children shall not exceed four years. An exception to this requirement can be made only by the IEP team bases upon the documented needs of the child and with the agreement of the parents of all of the other students in the class where placement is sought.

300.553 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 300. 306, each LEA shall ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child.

300.554 Children in public or private institutions.

Each LEA must ensure that LRE requirement is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

300.555-300.559 Reserved.

Confidentiality Of Information

300.560 Definitions.

As used in these regulations—

(a) **Destruction** means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(b) **Education records** means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

(c) **Participating agency** means any LEA, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.

300.561 Notice to parents.

(a) The LEA shall give notice, consistent with 300.503(c) within these regulations, that is adequate to fully inform parents about the requirements of confidentiality of personally identifiable information, including—

(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

(2) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(3) A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 and

implementing regulations in 34 CFR part 99.

300.562 Access rights.

(a) Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to these regulations, and in no case more than 10 calendar days after the request has been made.

(b) The right to inspect and review education records under this section includes—

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) A LEA may presume that the parent has authority to inspect and review records relating to his or her child unless the LEA has received appropriate documentation that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

300.563 Record of access.

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under the IDEA (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

300.564 Records on more than one child.

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

300.565 List of types and locations of information.

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

300.566 Fees.

(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

300.567 Amendment of records at parent's request.

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing under 300.568.

300.568 Opportunity for a hearing.

The agency shall, on request, provide an opportunity for a hearing pursuant to 300.507 to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

300.569 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must—

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.

300.570 Hearing procedures.

A hearing held under this part must be conducted according to the procedures under 34 CFR 99.22.

300.571 Consent.

(a) Except as to disclosures addressed in 300.529(b) for which parental consent is not required by Part 99, parental consent must be obtained before personally identifiable information is -

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement of this part.

(b) An educational agency or institution subject to 34 CFR part 99 may not release information from education records to participating agencies without parental consent unless authorized to do so under part 99.

(c) The SEA shall provide policies and procedures that are used in the event that a parent refuses to provide consent under this section.

300.572 Safeguards.

(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures regarding the confidentiality of personally identifiable information and 34 CFR part 99.

(d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

300.573 Destruction of information.

(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

300.574 Children's rights.

(a) The LEA shall provide policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(b) Under the regulations for the Family Educational Rights and Privacy Act of 1974 (34 CFR 99.5(a)), the rights of parents regarding education records are transferred to the student at age 18.

(c) If the rights accorded to parents under the IDEA are transferred to a student who reaches the age of majority (age 18), the rights regarding educational records in these regulations must also be transferred to the student. However, the public agency must provide any notice required under the IDEA to the student and the parents.

Part F—State Administration

General

300.600 Responsibility for all educational programs.

300.601-300.604 Reserved.

The RIDE will comply with all requirements of Subpart F of the IDEA regulations with regard to state administration and to ensure compliance with the IDEA.

State Advisory Panel

300.650 Establishment of advisory panels.

(a) The RIDE shall establish and maintain a State advisory panel on the education of children with disabilities.

(b) The advisory panel must be appointed by the Commissioner of Elementary and Secondary Education.

300.651 Membership.

(a) **General**. The membership of the State advisory panel must consist of members appointed by the Commissioner of Elementary and Secondary Education that is representative of the State population and that is composed of individuals involved in, or concerned with the education of children with disabilities, including -

(1) Parents of children with disabilities;

(2) Individuals with disabilities;

(3) Teachers;

(4) Representatives of institutions of higher education that prepare special education and related services personnel;

(5) State and local education officials;

(6) Administrators of programs for children with disabilities;

(7) Representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

(8) Representatives of private schools and public charter schools;

(9) At least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and

(10) Representatives from the State juvenile and adult corrections agencies.

(b) **Special rule**. A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities.

300.652 Advisory panel functions.

(a) **General**. The State advisory panel shall—

(1) Advise the RIDE of unmet needs within the State in the education of children with disabilities;

(2) Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

(3) Advise the RIDE in developing evaluations and reporting on data to the Secretary under section 618 of the Act;

(4) Advise the RIDE in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the IDEA; and

(5) Advise the RIDE in developing and implementing policies relating to the coordination of services for children with disabilities.

(b) **Advising on eligible students with disabilities in adult prisons**. The advisory panel also shall advise on the education of eligible students with disabilities who have been convicted as adults and incarcerated in adult prisons.

300.653 Advisory panel procedures.

(a) The advisory panel shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the RIDE. This report must be made available to the public in a manner consistent with other public reporting requirements of Part B of the Act.

(c) Official minutes must be kept on all panel meetings and must be made available to the public on request.

(d) All advisory panel meetings and agenda items must be announced enough in advance of the meeting to afford interested parties a reasonable opportunity to attend. Meetings must be open to the public.

(e) Interpreters and other necessary services must be provided at panel meetings for panel members or participants.

(f) The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties.

300.654-300.659 Reserved.

State Complaint Procedures

300.660 Adoption of State complaint procedures.

(a) **General**. The RIDE has established written procedures for—

(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of §300.662 of the IDEA regulations by 1) providing for the filing of a complaint with the RIDE; and 2) widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the RIDE's complaint procedures.

(b) **Remedies for denial of appropriate services**. In resolving a complaint in which it has found a failure to provide appropriate services, the RIDE, pursuant to its general supervisory authority under Part B of the Act, must address:

(1) How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child; and

(2) Appropriate future provision of services for all children with disabilities.

300.661 Rhode Island Department of Education complaint procedures.

(a) **Time limit; minimum procedures**. The RIDE has established a time limit of 60 days after a complaint is filed under this part to—

(1) Carry out an independent on-site investigation, if the RIDE determines that an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of the IDEA or these regulations; and

(4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—

(i) Findings of fact and conclusions; and

(ii) The reasons for the RIDE's final decision.

(b) **Time extension; final decision; implementation**. The RIDE's procedures described in paragraph (a) of this section also must—

(1) Permit an extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint; and

(2) Include procedures for effective implementation of the RIDE's final decision, if needed, including—

(i) Technical assistance activities;

(ii) Negotiations; and

(iii) Corrective actions to achieve compliance.

(c) **Complaints filed under this section, and due process hearings under 300.507 and 300.520-300.528.**

(1) If a written complaint is received that is also the subject of a due process hearing under 300.507 or 300.520-300.528, or contains multiple issues, of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

(2) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties—

(i) The hearing decision is binding; and

(ii) The RIDE must inform the complainant to that effect.

(3) A complaint alleging a LEA's failure to implement a due process decision must be resolved by the RIDE.

300.662 Filing a complaint.

(a) An organization or individual may file a signed written complaint under the procedures described in this part.

(b) The complaint must include—

(1) A statement that a LEA has violated a requirement of Part B of the Act or of these regulations; and

(2) The facts on which the statement is based.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with these regulations unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received under these regulations.

300.663 Methods of ensuring services.

(a) **Establishing responsibility for services**. The Chief Executive Officer or designee of that officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in paragraph (b) of this section and the SEA, in order to ensure that all services described in paragraph (b)(1) of this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph (a)(3) of this section. The agreement or mechanism must include the following:

(1) **Agency financial responsibility**. An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP).

(2) **Conditions and terms of reimbursement**. The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.

(3) **Interagency disputes**. Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(4) **Coordination of services procedures**. Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in paragraph (b)(1) of this section.

(b) **Obligation of noneducational public agencies**.

(1) **General**. (i) If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in 300.5 relating to assistive technology devices, 300.6 relating to assistive technology services, 300.21 relating to related services 300.23 relating to supplementary aids and services, and 300.24 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

(ii) A noneducational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

(2) **Reimbursement for services by noneducational public agency**. If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child's IEP) shall provide or pay for these services to the child in a timely manner. The LEA or State agency may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency shall reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a)(1) of this section, and the agreement described in paragraph (a)(2) of this section.

(c) **Special rule**. The requirements of paragraph (a) of this section may be met through--

(1) State statute or regulation;

(2) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(3) Other appropriate written methods as determined by the Chief Executive Officer of the State or designee of that officer.

(d) **Information**. The State must have on file with the Secretary information to demonstrate that the requirements of paragraphs (a) through (c) of this section are met.

(e) **Children with disabilities who are covered by public insurance**.

(1) A public agency may use the Medicaid or other public insurance benefits programs in which a child participates to provide or pay for services required under this part, as permitted under the public insurance program, except as provided in paragraph (e)(2) of this section.

(2) With regard to services required to provide FAPE to an eligible child under this part, the public agency—

(i) May not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the Act;

(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parent otherwise would be required to pay; and

(iii) May not use a child's benefits under a public insurance program if that use would—

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;

(C) Increase premiums or lead to the discontinuation of insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

(f) **Children with disabilities who are covered by private insurance**.

(1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent consistent with regulation 300.505.

(2) Each time the public agency proposes to access the parent's private insurance proceeds, it must—

(i) Obtain parent consent in accordance with paragraph

(f)(1) of this section; and

(ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(g) **Use of Part B funds**. (1) If a public agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B or state funds to pay for the service.

(2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the public agency may use its Part B or state funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

(h) **Proceeds from public or private insurance**.

(1) Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR 80.25.

(2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for

services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in 34 CFR 300.154 and 300.231.

(i) **Construction**. Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, or any other public insurance program.

Notice-Confidentiality

300.664 Notice to Parents—Confidentiality of personally identifiable information.

(a) The RIDE shall give notice that is adequate to fully inform parents about the requirements of confidentiality of personally identifiable information pursuant to Federal Regulation 34 CFR 300.127, including--

(1) A description of the extent that the notice is given in the native languages of the various populations groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding the storage, disclosure to third parties, retention and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information. including the rights under the Family Educational Rights and Privacy Act of 1974 and implementing regulations in 34 CFR part 99.

(b) Notice shall be published or announced in newspapers or other media, or both with circulation adequate to notify parents throughout the state before any major identification, location or evaluation activity takes place.

(c) The RIDE adheres to the Family Educational Rights and Privacy Act, (FERPA) 34 CFR part 99 as one way to comply with Federal Regulations 34 CFR 300. 127, 300.560-576.

Least Restrictive Environment (LRE)

300.665 Technical Assistance and training activities

The RIDE will carry out activities, technical assistance and training to ensure that teachers and administrators in all LEAs are fully informed about their responsibilities for implementing the requirements of LRE.

300.666 Monitoring.

(a) The RIDE shall carry out activities to ensure that the requirements of Federal Regulations 34 CFR 300.550 and 300.556 and RI Regulations 300.550 are implemented including—

(1) Reviewing a LEAs justification for its action inconsistent with the requirements of RI Regulations 300.550; and
(2) Assisting in planning and implementing any necessary corrective action.

APPENDIX A

R.I. REGULATIONS GOVERNING THE SPECIAL EDUCATION OF STUDENTS WITH DISABILITIES

TIMELINES FOR REFERRAL, EVALUATION, ELIGIBILITY, IEP AND RE-EVALUATION DECEMBER 14, 2000

Referral

10 school days — Local Education Agency (LEA) conducts a meeting to review a referral for special education evaluation within10 school days of receipt. Referral is reviewed by a team of qualified professionals and the parent. (RI Reg. 300.531)

10 school days — If an evaluation is needed, it must start no later than 10 school days after the receipt of parental consent to evaluate. (RI Reg. 300.531)

Evaluation/Eligibility

45 school days — Within 45 school days of parental consent to evaluate:

(i) Child is evaluated
(ii) Eligibility determination meeting is conducted
(iii) A written report of the evaluation team is made available to the LEA and the parent(s), and, if the child is determined eligible for special education services, the report is made available to the IEP Team. (RI Reg. 300.316)

60 school days

IEP

15 school days — If eligible, an IEP meeting is conducted and an IEP is developed for the child. (RI Reg. 300.343)

Re-evaluation

every 3 years (or sooner) — A re-evaluation must be conducted at least every 3 years or sooner if conditions warrant or if a parent or teacher requests a re-evaluation. (RI Reg. 300.536)

15 school days — If, as a result of a re-evaluation, the child continues to be eligible for special education services, an IEP meeting must be conducted within 15 school days of the determination of continued eligibility and an IEP developed for the child. (RI Reg. 300.536)

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